TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 201.

THOMAS F. FARRELL ET AL., PLAINTIFFS IN ERROR,

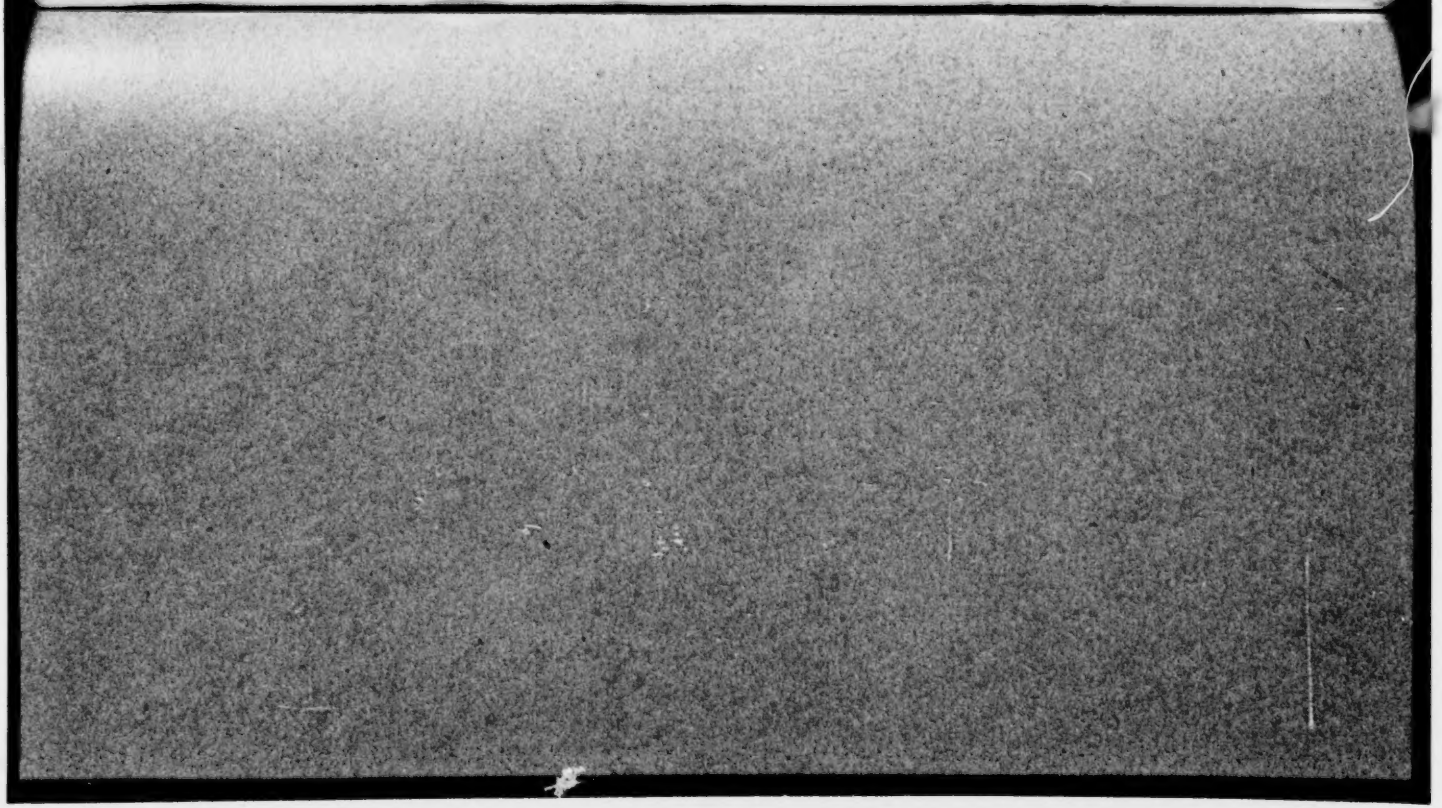
vs.

THE WEST CHICAGO PARK COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED FEBRUARY 9, 1900.

(17,639.)



(17,639.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 201.

THOMAS F. FARRELL ET AL., PLAINTIFFS IN ERROR,

vs.

THE WEST CHICAGO PARK COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original.	Print.
Writ of error	*a*	1
Clerk's certificate as to lodging copy of writ of error	*c*	2
Citation	*d*	2
Clerk's certificate as to lodging copy of citation	*g*	3
Clerk's certificate and return to writ of error	*h*	4
Caption	1	4
Transcript from county court of Cook county	2	5
Caption	2	5
Petition	3	5
Assessment-roll (part omitted in printing)	11	9
Order granting leave to commissioners to sign assessment-roll, &c. (omitted in printing)	27	—
Objections to confirmation of assessment (part omitted in printing)	28	11
Schedule of lands—A. (omitted in printing)	36	—
—B. (" ")	42	—
Order fixing time to file objections	45	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 11, 1901.

	Original.	Print
Objections to confirmation of assessment (parts omitted in printing)	46	13
Schedule of lands (omitted in printing)	47	—
Certificates of publication (" ")	56	—
Special assessment notice (" ")	57	—
Affidavit of posting notice (" ")	57	—
Commissioners' affidavit (" ")	58	—
Motion for default and confirmation	59	16
Order granting leave to commissioner to sign assessment-roll (omitted in printing)	65	—
Motion of Elizabeth Keller to set aside judgment of confirmation, &c. (omitted in printing)	66	—
Judgment, April 27, 1897	67	16
Allowance of appeal	67	16
Order continuing motion for rehearing	68	17
Order denying motion for rehearing, &c.	69	17
Order of confirmation as to property in default (omitted in printing)	70	—
Order reinstating cause	71	17
Order granting leave to file amended and additional objections	72	17
Additional objections (parts omitted in printing)	73	18
Order overruling objections triable by the court	81	21
Order beginning trial by jury	82	21
Verdict	83	22
Order granting leave to file motion for new trial	84	22
Judgment, May 26, 1898	85	22
Allowance of appeal	85½	23
Order continuing hearing on motion to set aside, &c.	86	23
Order refusing to set aside order overruling motion for new trial	87	23
Amendment to petition, June 7, 1898 (omitted in printing)	88	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	89	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	90	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	91	—
Bill of exceptions	92	24
Offers of evidence, &c.	93	24
Petitioners' Exhibit 1—Ordinance of March 28, 1893	94	25
2—Petition in cause No. 10655	97	27
Exhibit A—Diagrams (omitted in printing)	105	—
B—Specifications (omitted in printing)	107	—
C—Estimate	119	32
Testimony of George W. Dorr	124	35
Petitioners' Exhibit 3—Ordinance of August 4, 1896	127	37
Motion to dismiss	131	39
Testimony of Nathan G. Moore	132	40
Francis T. Colby	134	41

	Original.	Print
Wilbur Exhibit 1—Order of county court in case No. 10655, March 12, 1897 (part omitted in printing)	135	42
2—Writ of supersedeas in case No. 10655, filed October 4, 1895 (omitted in printing)	145	—
3—Writ of supersedeas in case No. 10655, filed October 10, 1895 (omitted in printing)	150	—
4—Writ of supersedeas in case No. 10655, filed March 12, 1897 (omitted in printing)	152	—
5—Notice in case No. 10655, March 1, 1897 (omitted in printing)	155	—
Testimony of Michael Kelter.....(omitted in printing)	157	—
Default order in case No. 10655, May 12, 1893 (omitted in printing)	164	—
Jury impanneled and view the premises	165	45
Proceedings May 25, 1898	166	45
Testimony of George W. Dorr	171	48
Objectors' Exhibit 1—Subpœna to Ernest G. Schubert *et al.* (omitted in printing)	177	—
Objectors' Exhibits 2 to 7 offered...(omitted in printing)	178	—
Instructions given on behalf of petitioners	180	52
Instructions asked by objectors	182	53
Motion for new trial	184	54
Notice of filing affidavits.....(omitted in printing)	186	—
Affidavit of George W. Dorr	188	56
Exhibits A, B, C, and D—Diagrams	197	61
Affidavit of Lewis R. Dyer	201	62
George W. Wilbur.....(omitted in printing)	203	—
Judge's certificate to bill of exceptions	204	63
Stipulation to use original bill of exceptions on appeal (omitted in printing)	205	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	206	—
Bond on appeal.....(omitted in printing)	207	—
Certificate of clerk of county court to transcript	215	63
Assignment of errors	216	64
Additional assignment of errors.....(omitted in printing)	218½	—
Order taking motion to extend time to file briefs under advisement (omitted in printing)	219	—
Order extending time to file briefs.....(omitted in printing)	220	—
Order granting leave to file additional assignment of errors (omitted in printing)	221	—
Order taking cause under advisement	222	65
Order taking motion to dismiss under advisement (omitted in printing)	223	—
Order reserving motion to dismiss to final hearing	224	65
Judgment, December 21, 1898	225	66
Order allowing petition for rehearing	226	67
Order taking cause under advisement	227	67

	Original.	Print
Judgment, October 13, 1899	228	67
Opinion	231	68
Order staying proceedings	237	72
Order denying petition for rehearing	238	72
Petition for writ of error	240	73
Affidavit of George W. Wilbur.....(omitted in printing)..	244	—
Order allowing writ of error, &c	248	75
Bond on writ of error. .....(part omitted in printing)..	251	77
Affidavit of George W. Wilbur.....(omitted in printing)..	255	—
Order allowing Michael Hannigan to become party to writ of error, &c..(omitted in printing)..	256	—
Assignment of errors	259	78
Statement of errors and designation by plaintiffs in error of parts of record to be printed	262	79

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sara E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neil, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Struch, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunning-
b ham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, and Joseph E. Bidwell, defendants and plaintiffs in error, and The West Chicago Park Commissioners, plaintiffs and defendants in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error has happened, to the great damage of the said plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be

done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 23rd day of January, in the year of our Lord one thousand nine hundred.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—
JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

c In the Supreme Court of Illinois.

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court of Cook.

I, Christopher Mamer, clerk of the said supreme court, do hereby certify that on the twenty-third day of January, in the year of our Lord one thousand nine hundred, a copy of the foregoing writ of error for the defendants in error was lodged in my office at Springfield, Illinois.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness my hand and the seal of said court this third day of February, A. D. 1900.

[Ten cent United States internal-revenue stamp, canceled Feb. 3, 1900.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, *ss:*

To the West Chicago Park Commissioners, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sara E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neill, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M·

Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Strueh, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunningham, J. W. Midgley, J. L. Hoerber, Jr.; Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, Joseph E. Bidwell, and Michael Hannigan are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the *e* judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, chief justice of the supreme court of the State of Illinois, this 24th day of January, in the year of our Lord one thousand nine hundred.

JAMES H. CARTWRIGHT,
Chief Justice Supreme Court of Illinois.

f [Endorsed:] 878. Supreme court of Illinois. *Supreme court.* McN. Farrell *et al. v.* West Chicago Park Com'rs' Citation. Earnest Shubert, sec. 2/2. Rec'd 10.10 o'clock a. m., Jan. 31, 1900. Ernest J. Magerstadt, sheriff. George W. Wilbur, attorney-at-law, Borden block, 99 Randolph St., Chicago.

Pd. $1.00.

STATE OF ILLINOIS, } *ss.:*
Cook County, }

Served this writ on the within-named The West Chicago Park Commissioners, a corporation, by delivering a copy thereof to Ernest C. Schubert, secretary of said corporation, this 2nd day of February, 1900, the president of said corporation not found in my county.

ERNEST J. MAGERSTADT, *Sheriff,*
By THOS. J. McNICHOLS, *Deputy.*

g In the Supreme Court of Illinois.

THOMAS F. FARRELL ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court of Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the third day of February, A. D. 1900, a copy of the foregoing citation and return thereon was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this third day of February, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent United States internal-revenue stamp, canceled Feb. 3, 1900.]

h In the Supreme Court of Illinois.

THOMAS F. FARRELL ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and seal thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages, numbered from one (1) to two hundred and fifty-seven (257), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled, and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this third day of February, in the year of our Lord one thousand nine hundred.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent United States internal-revenue stamp, canceled Feb. 3, 1900.]

1 At a supreme court begun and held at Springfield on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the fifth day of October, A. D. 1898, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the county court of Cook county; which said transcript of record is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, } ss.:
State of Illinois, County of Cook, }

Pleas before the Honorable William T. Hodson, county judge of Jo Daviess county, presiding as judge of the county court of Cook county, at the request and in the absence of the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 9th day, of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-second.

Present: The Honorable William T. Hodson, acting judge of the county court of Cook county; James Pease, sheriff of Cook county.
Attest: PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, to wit, on the 28th day of August, in the year of our Lord one thousand eight hundred and ninety-six, the same being one of the days of the term of the county court of Cook county, there was filed with the clerk of said court a certain petition in words and figures following, to wit:

3 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

To the Honorable Orrin N. Carter, judge of said court:

Your petitioner, West Chicago Park Commissioners, respectfully show- that said commissioners are park commissioners and corporate authorities for park purposes for the town of West Chicago, and that they have been appointed as such under and in pursuance of acts of the General Assembly of the State of Illinois, which have been submitted to the legal voters of said town, and by them adopted for the purpose of locating, establishing, enclosing, improving, and maintaining public parks, boulevards, driveways, and highways, and duly authorized to perform and discharge such duties as are by law imposed upon such authorities.

That your petitioner, in pursuance of said authority conferred upon it, did locate a boulevard or pleasureway in said town of West Chicago known as Douglas boulevard (or Douglas Park boulevard), extending from the southeasterly boundary of Garfield park to the western boundary line of Douglas park, said two parks and said boulevard being under the jurisdiction, control, and authority of your petitioner.

And your petitioner further shows that, desiring to improve said Douglas boulevard from the southeasterly line of Garfield park to the western line of Douglas park, it did carefully designate the line of said improvements, and did prepare a plan or plans thereof, and did prepare an estimate of the cost of such contemplated improve-

ment, together with specifications therefor, and did transmit
4 such plan, specifications, and estimates to the supervisor, assessor, and clerk of the said town of West Chicago in which said boulevard is located, said officers being the corporate authorities duly designated by an act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1st, 1873, as the corporate authorities of said town to make a special assessment for the purpose of paying the cost of such contemplated improvement of said boulevard; that your petitioner was requested and authorized to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land frontage on the proposed improvement as required by said act of May 2d, 1873.

Your petitioner further shows that upon the transmission and presentation of said plans, specifications, and estimates the corporate authorities of said town designated by said statute, at a special meeting called for that purpose, and held at the office of said town of West Chicago on March 28th, A. D. 1893, determined by ordinance duly adopted and passed by said authorities that such improvements as were described in the plans, specifications, and estimates so transmitted to said corporate authorities of said town should be made, and that the expense of such improvement should be raised wholly by a special assessment upon the property, lots, and lands fronting and abutting upon said Douglas boulevard, as aforesaid; that thereafter, on April 7th, A. D. 1893, a petition was filed in this honorable court by said town of West Chicago reciting said proceedings and ordinance and praying that commissioners to assess the cost of said improvement on the property benefited might be appointed (case number 10655) and for such further proceed-
5 ings as might be necessary to properly levy and collect said special assessment; that thereafter commissioners were duly appointed, an assessment-roll was duly made and filed as prayed in said petition, and on the 12th day of May and on the 8th day of July, 1893, orders were entered in said cause confirming said assessment-roll; that thereafter various lot-owners made payments on various lots as assessed in said roll, and a large portion of said assessments were collected; that various lot-owners so assessed have failed, declined, and refused to pay their assessments, and so a large portion of such assessment remains uncollected.

Your petitioner further shows that after said confirmation orders the owners of certain property assessed in said roll served out a writ of error from the supreme court of Illinois, seeking to annul the confirmation of said special assessment; and thereafter the said cause was heard in the said supreme court, and the said court, after considering the same, and on 28th day of March, 1896, ordered that said cause be reversed and remanded for further proceedings, and with certain directions, and held that said ordinance for the making of said improvement was void because it illegally provided that said

assessment should be divided into installments, and that said judgments of confirmation were null and void; wherefore the provisions of said ordinance and said special-assessment proceedings have failed; that in consequence thereof all attempts to collect said assessments have been abandoned by petitioner by resolution duly entered on its records.

Your petitioner further shows that, by reason of the special-assessment proceedings aforesaid for the purpose of paying for the said improvement having so been declared null and void and the said provisions thereof having failed, your petitioner is desirous and hereby petitions said court that a new special assessment for
6 the cost of said improvement on property benefited may be levied, and that all lots, blocks, tracts, or parcels of land found benefited by the same shall pay for the said benefits.

Your petitioner further shows that on the 14th day of July, A. D. 1896, in pursuance of its desire and purpose to have made, levied, and collected a new special assessment for the cost of said improvement they passed the following ordinance:

An ordinance for the special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park, formerly known as Central park, to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the West Chicago park commissioners, in regular meeting assembled:

SECTION 1. That whereas the corporate authorities of the town of West Chicago passed an ordinance on March 28th, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates made and transmitted by said West Chicago park commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement, and

Whereas, certain proceedings were instituted by the corpo-
7 rate authorities of said town of West Chicago, in the county court of Cook county, on April 17th, A. D. 1893, for the levying of a special assessment for the cost of said improvement in pursuance of said ordinance, as case number 10655 of said court, and

Whereas, the said boulevard improvement has been heretofore made and completed, and

Whereas, the said special-assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement have been heretofore and on the 28th day of March, A. D. 1896, declared void by the supreme court of

Illinois, a court of competent jurisdiction, and the provisions of said ordinance for the special assessment have failed, and

Whereas, said boulevard improvement provided for in said ordinance included an asphalt roadway, and a granite macadam roadway, concrete sidewalks, and concrete combined curb and gutter, earth filling, grass plats, seeding, trees, catch-basins and connections and superintendence of work: Now

Therefore be it ordained:

SECTION 2. That a new special assessment on the property benefited by the said improvement, to the amount that the same may be legally assessed for, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such costs to be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled, "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th, 1895, and in force July 1st, 1895.

SECTION 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SECTION 4. This ordinance shall be in force from and after its passage.

8 Your petitioner further shows that afterwards, and on the said 14th day of July, A. D. 1896, said commissioners also made an estimate of the cost of said improvement, and a report thereof was entered upon their records, and that the said estimate and order adopting and spreading the same upon record are as follows:

Be it resolved and ordered that the following estimate be adopted as the estimate of this board of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby, directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost of said improvement, in accordance with the act in said ordinance mentioned.

Estimate of Cost of Improvement and Report Thereon.

The following is an estimate made by the West Chicago park commissioners of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, said estimate being made in pursuance of an ordinance of the West Chicago park commissioners, passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement, which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners re-

lating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

9 *Estimate.*

Asphalt paving	$110,420.71
Macadam paving	35,087.81
Combined curb and gutter	28,045.34
Cement sidewalk	24,262.26
Filling	17,290.20
Trees	1,110.30
Catch-basins and connections	3,819.59
Gas-lamp connections	2,106.00
Manhole covers, sand, cement, brick, pipe	1,006.89
General labor, teaming, engineering, surveying, and inspection	19,770.51
Expense of making and levying this assessment	7,287.59
Total cost of improvement	$250,207.20

Wherefore this petitioner prays that the cost of said improvement may be assessed in the manner provided by law and in accordance with the said act approved June 24th, and in force July 1st, A. D. 1895.

WEST CHICAGO PARK COMMISSIONERS,
By E. T. NOONAN, *Its Attorney.*

And of—
H. S. MECARTNEY, *Counsel.*

10 And afterwards and on, to wit, the 29th day of August, 1896, a certain assessment-roll was filed in said cause; which assessment-roll is in words and figures as follows, to wit:

11–23 *Assessment-roll.*

Assessment-roll, made by the West Chicago park commissioners and filed in the county court of Cook county, for the special assessment of the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, Cook county, Illinois. Showing a description of real estate deemed by said commissioners specially benefited by said completed improvement, and also showing a description of each lot, block, tract, or parcel of land, and the total amount assessed by said commissioners as special benefits thereto, the names of the respective owners thereof, so far as known, showing, also, the credit to which each lot, block, tract, or parcel of land so specially assessed is entitled to, if any, for or on account of payments on previous assessments or installments thereof, and the net amount of benefits assessed thereon; also, showing the amount found by said commissioners as public

benefit and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners.

24 * * * * * * *

Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the property specially benefited by said improvement, and apportioned to and assessed upon such property	$249,965 21
Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the public, and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners	241 99
Total cost of the said completed improvement	$250,207 20

25 CHICAGO, *August* 29, 1896.

The undersigned, West Chicago park commissioners, do hereby certify to the county court of Cook county, that they have specially assessed the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park in the town of West Chicago in the city of Chicago, Cook county, Illinois.

And said commissioners do further certify that the said special assessment is shown by the foregoing assessment-roll, showing a description of the real estate by them deemed benefited by said completed improvement; also showing a description of each lot, block, tract or parcel of land, and the total amount assessed by them as special benefits thereto, the names of the respective owners thereof so far as known, showing also the amount found by said commissioners as public benefit and assessed to the district subject to the maintenance of the parks under control of said West Chicago park commissioners. That before entering upon their said duties, they examined the locality where the said completed improvement has been made, and the lots, blocks, tracts and parcels of land which are specially benefited thereby, and did estimate what proportion of the total cost of said completed improvement is of benefit to the public, and what proportion thereof is of benefit to the property benefited, and did apportion the same between the said park district and such property so that each should bear its relative equitable portion.

26 & 27 The amount so estimated and apportioned to said park district being the sum of $241.99 and the amount so estimated and apportioned to property benefited being the sum of $249,965.21. That, having found said amounts, they did apportion and assess the amount so found of benefit to said property, upon the several lots, blocks, tracts and parcels of land, in the proportion in which they are benefited by said completed improvement, and that no lot, block, tract or parcel of land has been assessed a

greater amount than it has been actually benefited thereby; that said assessment-roll also shows the credit to which each lot, block, tract or parcel of land so specially assessed is entitled to, if any, for or — account of payments on previous assessments, or installments thereof, and the net amounts of benefits assessed thereon.

HARVEY T. WEEKS,
CARL MOLL,
WALTER S. BOGLE,
ANDREW J. GRAHAM,
JOHN M. OLIVER,
CHARLES J. VOPICKA,
EDWARD G. UHLEIN,
West Chicago Park Commissioners.

28 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County, of the September Term, 1896.

In the Matter of the Application of WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for the Improvement of Douglas Boulevard from the Southeasterly Boundary Line of Garfield Park to the Western Boundary Line of Douglas Park.

And now come the several parties whose names are set down in the "Schedule of Land A" and "Schedule of Land B" hereto attached, by George W. Wilbur, their attorney, and say that they are respectively the owners of or interested in the several lots and parcels of land described therein and set opposite their respective names, and object to the confirmation of said assessment upon said lots or parcels of land or either of them or any part thereof for the reason stated in the instrument hereto attached and entitled herein "Objections to judgment."

GEO. W. WILBUR,
Attorney for Objectors.

* * * * * * *

29 3d. Said petitioners, The West Chicago Park Commissioners, were never authorized or requested to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land fronting on the proposed improvement, as required by the act of May 2, 1873; neither did said petitioners at any time have or obtain such consenting petition, signed by a majority of such owners.

* * * * * * *

30 8th. These objectors further state that said petitioners never passed a legal and proper ordinance, in the manner and form as required by law for making the assessment set forth in the petition herein.

9th. These objectors further state that said act under which said petition was filed entitled "An act to enable park commis-
31 sioners and park authorities to make local improvements and provide for the payment thereof," approved June 24, 1895,

and in force July 1, 1895, is not in accordance with the constitution of the State of Illinois, and is therefore void.

* * * * * * *

11th. These objectors state that said West Chicago Park Commissioners had no authority under the law to make said improvement or to make any assessment therefor, and that all their acts and doings in regard thereto are void.

12th. These objectors state that a boulevard has been completely laid upon the territory described in the petition herein that said improvement has been completed in all its detail for many months last past and that the petition herein is for the purpose of making an assessment for an improvement already completed, and is therefore void.

* * * * * * *

14th. These objectors state that the West Chicago Park Commissioners have no authority under the law to make any assessment whatever for the purposes in said petition set forth; that said improvement is an ornamental pleasureway and can be used for
32 only limited purposes; that the cost thereof should be paid for by said commissioners from the money derived from the park and boulevard tax and from other sources, and not by special assessment.

* * * * * * *

16th. Said West Chicago Park Commissioners, the petitioners herein, have no legal right or authority to act as commissioners in making said assessment and determining the amount to be assessed against the several pieces and parcels of land alleged to be benefited by said completed improvement; that said commissioners, as appears by the petition herein, are parties in interest in the matter of said petition, and are not disinterested commissioners in the making of said assessment.

17th. These objectors state that there is no statute or provision of law in force in the State of Illinois authorizing the West
33 Chicago Park Commissioners to make a special assessment for any improvement whatever; that the petition herein and the assessment-roll filed therewith are for a special assessment for the cost of said improvement, and made to be levied upon all property benefited and not upon all property abutting upon said improvement, and such proceedings are therefore void.

* * * * * * *

19th. And these objectors further state that their respective lots and pieces of land herein are not benefited by said alleged improvement to the amount of the assessment thereof, or to any amount whatever as is allowed in said petition and the assessment-roll herein.

* * * * * * *

34 22d. That the original proceedings for the making of said assessment does not specify the nature, character, locality and description of said improvement, and is void for uncertainty.

* * * * * * *

35 24th. That the estimate of the cost of said completed improvement was not made and approved as required by law; that no sufficient proof of services of notice by publication, proof and mailing has ever been made and filed in this cause in the manner required by law; that said special assessment is void because it is not levied in accordance with any ordinance providing for said special assessment, and because the ordinance which is the basis of said special assessment has been declared void; that said ordinance upon which said improvement is based is unconstitutional and void because it provides for several distinct and independent improvements based upon altogether different and distinct acts of the legislature; that it is unreasonable and oppressive; that said assessment is void because it appears from the face of the petition that the only ordinance in any manner specifying the nature, character, locality and of the description of the improvement was an ordinance passed by the town of West Chicago, and not by the West Chicago Park Commissioners, and that said ordinance has been declared absolutely null and void by the supreme court, and no valid estimate or valid assessment could be based thereon; that said assessment is void as to all property not abutting upon said boulevard.

* * * * * * *

36–44 For the above reasons these objectors object to the confirmation of said special assessment, and ask that the proceedings and petition herein be dismissed out of this court.

* * * * * * *

45 And afterwards and on, to wit, the 16th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

On motion of the attorney for the said petitioners, it is ordered by the court that any and all parties desiring to object to the confirmation of the assessment-roll herein file their objections thereto in writing on or before September 23, 1896, at ten o'clock a. m.

46–48 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County, of the September Term, 1896.

In the Matter of the Application of WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for the Improvement of Douglas Boulevard from the Southeasterly Boundary Line of Garfield Park to the Western Boundary Line of Douglas Park.

And now come the several parties whose names are set down in the "schedule of lands" hereto attached, by George W. Wilbur,

their attorney, and say that they are respectively the owners of or interested in the several lots and parcels of land described therein and set opposite their respective names, and object to the confirmation of said assessment upon said lots or parcels of land or either of them or any part thereof for the reason stated in the instrument hereto attached and entitled herein "Objections to judgment."

GEO. W. WILBUR,
Attorney for Objectors.

* * * * * * *

49 3. Said petitioners, The West Chicago Park Commissioners, were never authorized or requested to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land fronting on the proposed improvement, as required by the act of May 2, 1893; neither did said petitioners at any time have or obtain such consenting petition, signed by a majority of such owners.

* * * * * * *

5. These objectors further state that said petitioners never passed a legal and proper ordinance, in the manner and form as required by law, for making the assessment set forth in the petition herein.

6. Those objectors further say that said act under which said petition was filed, entitled "An act to enable park commissioners and park authorities to make local improvements, and provide for the payment thereof," approved June 24, 1895, and in force July 1, 1895, is not in accordance with the constitution of the State of Illinois, and is therefore void.

* * * * * * *

50 9. These objectors state that a boulevard has been completely laid upon the territory described in the petition herein; that said improvement has been completed in all its details for many months last past, and that the petition herein is for the purpose of making an assessment for an improvement already completed, and is therefore void.

* * * * * * *

11. These objectors state that the West Chicago Park Commissioners have no authority under the law to make any assessment whatever, for the purposes in said petition set forth; that said improvement is an ornamental pleasureway, and can be used for only limited purposes; that the cost thereof should be paid for by said commissioners from the money derived from the park and boulevard tax, and from other sources, and not by special tax or special assessment.

* * * * * * *

51 13. Said West Chicago Park Commissioners, the petitioner herein, have no legal right or authority to act as commissioners in making said assessment and determining the amount to be assessed against the several pieces and parcels of land alleged to be benefited by said completed improvement; that said commissioners, as appears by the petition herein, are parties in interest in the matter

of said petition, and are not disinterested commissioners in the making of said assessment.

14. These objectors state that there is no statute or provision of law in force in the State of Illinois authorizing the West Chicago Park Commissioners to make a special assessment for any improvement whatever; that the petition herein and the assessment-roll filed therewith are for a special assessment for the cost of said
52 improvement, and is made to be levied upon all property benefited, and not upon all property abutting upon said improvement, and such proceedings are therefore void.

* * * * * * *

16. And these objectors further state that their respective lots and pieces of land herein are not benefited by said alleged improvement to the amount of the assessment thereof, or to any amount whatever, as is alleged in said petition and the assessment-roll herein.
53 * * * * * * *

18. That the original proceedings for the making of said improvement does not specify the nature, character, locality and description of the improvement, and is void for uncertainty.

* * * * * * *

20. That the estimate of the cost of said completed improvement was not made and approved as required by law; that no sufficient proof of service of notice by publication, posting and mailing has ever been made and filed in this cause in the manner required by law; that said special assessment is void because it is not levied in accordance with any ordinance providing for said special assessment, and because the ordinance, which is the basis of said special assessment, has been declared void; that said ordinance upon which said improvement is based is unconstitutional and void, because it provides for several distinct and independent improvements based upon altogether different and distinct acts of the legislature; that it is unreasonable and oppressive; that said assessment is void because it appears from the face of the petition, that the only ordinance which in any manner specifies the nature, character, locality and description of the improvement was an ordinance passed by the town of West Chicago, and not by the West Chicago Park
54–58 Commissioners, and that said ordinance has been declared absolutely null and void by the supreme court, and no valid estimate or valid assessment could be based thereon; that said assessment is void as to all property not abutting upon said boulevard.

* * * * * * *

For the above reasons these objectors object to the confirmation of said special assessment, and ask that the proceedings and petition herein be dismissed out of this court.

GEO. W. WILBUR,
Attorney for Objectors.

59 And afterwards and on, to wit, the 26th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Assessment by THE WEST CHICAGO PARK COMMISSIONERS for the Completed Boulevard Improvement on Douglas Boulevard from Garfield Park to Douglas Park, in the Town of West Chicago, City of Chicago. 15232.

60–66 On this 26th day of September, A. D. 1896, comes the West Chicago Park Commissioners by *its* attorney and moves the court for a default herein and for confirmation of said assessment.

And it appearing to the court that the said West Chicago Park Commissioners have complied with all the requirements of the law in making said assessment and also as to posting and sending notices to the owners of the property assessed, and that due publication of notice was made, and that due notice as required by law has been given of this application and of the making and return of said assessment, and of the time for the final hearing thereon; and no objection to said assessment having been filed except as to the real estate described below, and no defense thereto made except on behalf of the owners of the real estate for which objections have been filed.

It is ordered and adjudged by the court that a default be and is hereby entered against each and all the lots, blocks, tracts and parcels of land assessed and described in the said assessment-roll for said improvement, returned and filed in this court, as to which no objections have been filed, and that said assessment and all proceedings therein be and the same are hereby confirmed, except as to the real estate described in objections on file, and that the clerk of this court certify the assessment-roll returned by said commissioners, together with this judgment to Dennis Colbert, collector of special assessments for said West Chicago Park Commissioners, it appearing to the court that he is authorized to collect the said assessments as required by law.

The real estate for which objections have been filed is described as follows:

* * * * * * *

67 And afterwards and on, to wit, the 27th day of April, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232. Special Assessment.

This day again come the petitioners herein, by their attorney, and the objectors herein, by their attorney; and said cause comes on to be heard on the legal objections to said assessment. After arguments of counsel and due deliberation by the court, it is ordered that all of said legal objections be, and are hereby, sustained.

And thereupon, on motion of the said objectors, it is further ordered that the petition herein be, and is hereby, dismissed.

Whereupon the said West Chicago Park Commissioners now here duly excepts, and prays an appeal to the supreme court of the State

of Illinois, which is allowed them on filing herein bill of exceptions within sixty days.

68 And afterwards and on, to wit, the 7th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232. Special Assessment.

On this day comes the said petitioner, by its attorney, and enters its motion for a rehearing in said cause, which is continued until tomorrow.

69&70 And afterwards and on, to wit, the 8th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232. Special Assessment.

And now, on this day, said cause again comes on to be heard on the petitioners' motion heretofore entered for a rehearing in said cause. Come all the parties in interest, by their attorneys, respectively. After arguments of counsel and due deliberation of the court, it is ordered that said motion for a rehearing, as aforesaid, be, and is hereby, overruled; whereupon the said petitioners now here duly except and pray an appeal to the supreme court of the State of Illinois, which is allowed on said petitioners filing herein bill of exceptions within sixty days from this date.

* * * * * * *

71 And afterwards and on, to wit, the 6th day of April, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of Douglas Park Boulevard Assessment. 15232.

On motion of the attorney for the said petitioner, it is ordered by the court that the said cause be, and is hereby, reinstated as to all the objections on file herein, and the hearing of said objections is hereby set for May 17, 1898, at ten o'clock a. m.

72 And afterwards and on, to wit, the 18th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

Now, on this day, it is ordered by the court that George W. Wilbur have leave, and such leave is hereby given to him, to file herein amended and additional objections to said assessment.

And afterwards, to wit, on the 18th day of May, A. D. 1898, there *was* filed with the clerk of said court *a* certain additional objections in words and figures following, to wit:

73 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County, of the May Term, 1898.

In the Matter of the Application of WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for the Cost of the Improvement of Douglas Boulevard from the Southeasterly Boundary Line of Garfield Park to the Western Boundary Line of Douglas Park.

Amended and additional objections filed by leave of court first had and obtained on behalf of the objectors and owners of real estate set forth and described in the objections filed on their behalf herein by George W. Wilbur on, to wit, the 16th and 23rd days of September, 1896.

First. To the objections filed in the above-entitled cause by George W. Wilbur on the 16th day of September, 1896, and on the 23rd day of September, 1896, respectively, and to the schedule of lands attached to each set of said objections, add the "amended and additional objections to judgment and to assessment," hereto attached and numbered from 1 to 32, inclusive.

____ ____,
Attorney for said Owners and Objectors.

74 *Amended and Additional Objections to Judgment and to Assessment.*

1. The ordinance for said improvement is incomplete, informal, unreasonable, unjust, oppressive, and void.

2. The ordinance for said improvement is invalid because it does not specify the nature, character, locality, and description of the said improvement.

3. Said petitioners never had any power, authority, or jurisdiction over the property of these objectors for the purposes of making said improvement.

5. The improvement to be paid for by said assessment has been changed, and it is different from the improvement described in the ordinance and proceedings herein.

6. The petition herein is informal, insufficient, and void because it does not contain a copy of the ordinance under which the said improvement was constructed, neither does it contain a copy of the ordinance under which the present proceedings are being carried on in this court.

7. Said petition herein is insufficient and void because it does not contain an estimate of the cost of the completed portions of said improvement, as is required by law. Said petition is also insuffi-

cient and void because the alleged ordinance and the alleged assessment and the alleged estimate of the cost of the completed portions of said improvement contain items which cannot be made the subject of special assessment, and they are each in other respects contrary to law.

* * * * * * *

75 10. The proceedings herein are void because the subject-matter of said proceedings has been fully adjudicated and determined by the supreme court of the State of Illinois in a proceedings lately pending in said last-named court between the Town of West Chicago and these objectors; that said Town of West Chicago in such proceedings was acting on behalf of and in the interest of the said Board of West Chicago Park Commissioners, the petitioners herein; that the subject-matter of said proceedings was the same as the subject-matter under consideration herein; that on or about the 12th day of March, 1897, an order was entered in said county court, in accordance with the mandate of said supreme court, as to all of the property of the objectors, as will fully appear by the records of said county court, ready to be produced on the hearing
76 hereof; that such order is final and binding as to the petitioners herein and as to said Town of West Chicago and as to the objectors herein, and it fully and finally determines the rights of said parties as to the assessment proceedings for the cost of the improvement of Douglas boulevard, as set forth in the petition herein.

11. The petition and proceedings herein are insufficient and void because they are contrary to the constitution of the State of Illinois, because the provisions of the statute under which such petition is filed is retroactive, and because such petition and the proceedings herein put clouds upon the titles to the property of these objectors without due process of law, and because said petition and the proceedings herein are in other respects contrary to the constitution of the State of Illinois and the laws thereof.

12. The statute under which the present proceedings are being conducted is contrary to the Constitution of the United States and in conflict with section 10 (first) of article 1 thereof.

14. Said assessment is not levied upon the several parcels of land of these objectors in proportion to the benefits alleged to come to their several pieces of property, respectively, from such improvement.

15. The proceedings herein are void because they are for the purpose of collecting for the cost of work done under void original proceedings, such original proceedings having been declared void by order and consent of the petitioners herein.

16. Said assessment is levied upon a part only of the property which is specially benefitted by said alleged improvement.

17. The said assessment upon the property of these objectors exceeds the benefits which have accrued to their said property
77 from the said improvement.

18. The said assessment upon the property of these objectors exceeds the proportionate share of the cost of said alleged improvement fairly and equitably chargeable upon their said property.

* * * * * * *

21. The alleged estimate herein was never adopted by resolution of the petitioners herein in the manner provided by law, and said estimate is therefore illegal and void.

22. The petitioners herein, in making said assessment, have not followed the requirements of the ordinance which is the basis of this proceedings, but, on the contrary thereof, have made and returned an assessment-roll which is not in accordance with the said ordinance, nor with the statutes of said State of Illinois; neither is said assessment-roll properly made and certified by said petitioners; neither does the alleged certificate of said petitioners to said alleged assessment-roll contain a description of the nature, character, and locality of the improvement.

* * * * * * *

78 28. Said petitioners did not, prior to the making of said alleged boulevard improvement, obtain the consent in writing of a majority of the owners of the frontage of the lots and lands
79 abutting on said alleged boulevard improvement; neither did the petitioners herein nor the town of West Chicago at any time have or obtain a legal consenting petition in writing, signed by a majority of the owners of lots and lands abutting on said improvement, requesting or directing either the petitioners herein or the town of West Chicago to construct the improvement referred to in the petition and proceedings herein; neither did said petitioners nor the said town of West Chicago, at the time of the construction of said improvement nor at any other time, have a consent in writing of a majority of the owners or lots and lands abutting on said improvement consenting to, requesting, or directing either said petitioners or said town of West Chicago to construct said improvement or boulevard.

* * * * * * *

30. The assessment herein is unjust and inequitable because the petitioners herein are the owners in trust and are in possession of the center one hundred and thirty feet of said boulevard for its entire length, either side of which one hundred and thirty feet is adjacent to and abutting upon the roadway on each side of said boulevard; that said one hundred and thirty feet in the center of said boulevard receives a large proportion of the benefits of said improvement, while no part of said assessment is levied against the same.

80 31. The boulevard in question herein is park property, and is owned by the petitioners herein in trust, and it is under their control and *it* used for park purposes; that it is improved with trees, walks, lights, and other improvements below the surface, and these objectors contend that the entire cost of said improvement should be paid for from the boulevard and park tax fund and from the general funds of said petitioners.

* * * * * * *

GEO. W. WILBUR,
Attorney for Certain Objectors.

81 And afterwards and on, to wit, the 18th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

STATE OF ILLINOIS,)
County of Cook,) ss:

In the County Court of Cook County.

In re Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard. Number 15232.

And now, on this 18th day of May, 1898, come all the objectors for which objections have been filed in this cause in the name of Richard Prendergast, G. W. Wilbur, W. W. Grimstead, W. P. Quinby, J. J. Parker, F. T. Colby, A. H. Meads, J. R. Ward, and Fanning and Herdlicka; and the court, having heard the evidence adduced and being duly advised in the premises, overrules all objections which are triable before the court without a jury, and the said cause, as to objections which are triable before a jury, is ordered to proceed.

82 And afterwards and on, to wit, the 24th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day come the said West Chicago Park Commissioners, their attorney, and the objectors herein, represented by George W. Wilbur, their attorney, and said cause coming on to be heard on the objections filed herein by the said objectors to the confirmation of the assessment-roll in said cause, it is ordered by the court that the cause proceed and a jury come; whereupon come the jurors of a jury of twelve good and lawful men as follows:

H. C. Steger, Sam'l Clausen, D. L. Eglin, D. S. Richards, H. P. Bennett, John Sick, T. F. Kennedy, C. B. Miller, George Steinerg, C. B. Killian, W. B. Harrison, C. H. Chamberlain, who are duly tried, elected, and sworn well and truly to try the issues joined and a true verdict rendered according to the evidence. After hearing all the evidence adduced and the arguments of counsel and the instructions of the court, said jury retire from the bar of the court to consider of their verdict, with leave to seal their said verdict and disperse. It is further ordered that said jury return into open court at the next session thereof tomorrow morning.

83 And afterwards and on, to wit, the 25th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day again come the West Chicago Park Commissioners, by their attorney, and the objectors herein, represented by George W. Wilbur, their attorney, and the jury heretofore impaneled for the trial of said cause also come with their verdict as follows:

We, the jury, find the issues for the petitioner herein, and that the property of the objectors is not assessed more or less that it will be benefited by the proposed improvement, nor more or less than its proportionate share of the cost of said improvement.

Whereupon the said objectors, by their said attorney, submit herein their motion for a new trial of said cause.

84 And afterwards and on, to wit, the 26th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

Now, on this day, it is ordered by the court that George W. Wilbur have leave, and such leave is hereby given, to file herein his motion for a new trial in said cause.

85 And afterwards and on, to wit, the 26th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

Now, on this 26th day of May, A. D. 1898, come the West Chicago Park Commissioners, by their counsel, and now come the objectors for whom objections have been filed in the name of George W. Wilbur, attorney, by said attorney, and the jury heretofore called to try the issues in said objections having rendered a verdict for the petitioner and finding that the property of the objectors described in said objections has not been assessed more than it has been specially benefited by the said improvement or more or less than its proportionate share of the cost of said improvement, and thereupon the said objectors having moved the court for a new trial herein and leave given to file said motion as of this date, the court overrules said motion; to which action of the court in overruling said motion said objectors excepted.

It is hereby considered and adjudged by the court that the said assessment-roll as to each and all of the said property of the said objectors and for which objections have been filed in the name of the said attorney be confirmed, and as to each and all of the said lots, tracts, or parcels of land contained in said objections, and as to each and all of the amounts shown to be assessed by said assessment-roll against said lots, tracts, or parcels of land respectively, and as the same are therein shown to be assessed.

85½ And thereupon each of the said objectors prays several appeal to the supreme court of Illinois, which is allowed in each instance and to each objector upon his filing an appeal bond in the due form in the penal sum of two hundred and fifty dollars, with surety to be approved by the clerk of this court, and also upon the filing of a bill of exceptions herein, said bond and bill of exceptions to be filed within thirty days from this date.

86 And afterwards and on, to wit, the 28th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day comes George W. Wilbur and moves the court to set aside the order of this court heretofore entered overruling the motion for a new trial herein.

And thereupon it is ordered that the hearing on said motion be, and is hereby, continued.

87–91 And after- and on, to wit, the 4th day of June, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

And now, on this day, comes George W. Wilbur, attorney for certain objectors in the above-entitled cause, and also comes H. S. Mecartney, attorney for the petitioners herein, and now comes up for disposition the motion heretofore entered on behalf of said objectors to set aside the order overruling the motion for a new trial and for granting said motion for a new trial. In support of said motion said George W. Wilbur, attorney for said objectors, presented and read the affidavits of George W. Dorr, George W. Wilbur, and Louis R. Dyer, copies of which affidavits were on, to wit, the 3*rd* day of June, 1898, served upon the said attorney for the petitioners and filed herein on said day; and the court, after hearing arguments of counsel and being fully advised in the premises, overrules said motion and refuses to set aside the order overruling the motion for a new trial herein; to which order and ruling of the court the said objectors, by their attorney, then and there duly except.

92 And afterwards, to wit, on the 19th day of July, A. D. 1898, there was filed with the clerk of said court a certain bill of exceptions in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } ss:

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

Bill of Exceptions.

Be it remembered that on the hearing of the legal objections to the confirmation of the assessment-roll in the above-entitled cause before his honor William T. Hodson, acting judge of the county court of Cook county, on the 17th day of May, 1898, the following proceedings were had as to the objections filed by George W. Wilbur for certain objectors and the owners of real estate in said objections described:

Appearances: For petitioners, Mr. Francis A. Riddle and Mr. H. S. Mecartney; for objectors, Mr. George W. Wilbur.

Certain other attorneys representing various owners and objectors were present and participated in the examination, with the understanding and agreement between counsel that testimony taken on the hearing might be used by the several attorneys respectively, where the same affected the interests of their respective clients.

And thereupon the petitioners, to maintain the issues on their part, introduced the following evidence, to wit:

93 Mr. MECARTNEY: The petitioners offer an ordinance of the town board of West Chicago of March 28th, 1893, as set forth on pages 151 to 154, inclusive, of the printed abstract of record used in the hearing of this case in the supreme court, entitled "West Chicago Park Commissioners *vs.* Farber *et al.*" The specifications embodied in said ordinance and referred to on pages 151 to 154, inclusive, of said abstract, are set out on pages 199 to 208 of the same record. That document, embodying the specifications, is offered. (Same shown *infra* set out and annexed to the petition in case No. 10655.)

Mr. WILBUR: I object to the introduction of the ordinance referred to on the ground that it is informal, insufficient, and illegal, and that it was passed without authority existing in the town of West Chicago.

The COURT: That does not go to the form of the instrument, being the abstract. That is waived, is it not?

Mr. WILBUR: I don't object to it on that ground.

The COURT: The objections ought to be made now, gentlemen; let me know what they are. I don't want to admit this document as to the one and withhold — oppose it as to the other.

Mr. MECARTNEY: Hadn't we better call off the names of the attorneys present and objecting?

The COURT: No; it is considered that all the attorneys are present.

Mr. MECARTNEY: No; several are going to submit the question of benefits to the court, and their objections we are to take up later. The attorneys represented are George W. Wilbur, Richard Prender-

gast, Fanning, Herdlicka & Jandus, James R. Ward, K. K. Knapp, represented by Mr. Breeden, W. W. Grimstead, and W. P. Quinby.

The COURT: Make these objections as we go along. If there are no other objections the objection will be overruled.

Mr. WILBUR: Exception.

94 Document referred to admitted in evidence and marked "Petitioners' Exhibit 1."

Said ordinance is as follows:

The Ordinance.

An ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the city of Chicago, town of West Chicago, county of Cook and State of Illinois.

Whereas, the West Chicago park commissioners have under their control a certain boulevard or pleasureway known as Douglas boulevard, or Douglas Park boulevard, lying and situate between the southeasterly line of Garfield park (formerly known as Central park), and running thence south for a distance of 4,250 feet, more or less, to a point in sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its intersection with the west line of Douglas park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago park commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, said West Chicago park commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans, specifications, and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

Whereas, said West Chicago park commissioners have made plans, specifications, and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications, and estimates of the cost of such improvement as provided by law; and,

Whereas, said board of West Chicago park commissioners have also submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

Whereas, the corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land front-

ing on Douglas boulevard, or Douglas Park boulevard, from
95 the south line of Garfield park to the west line of Douglas park, as provided by law;

Now, therefore, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago park commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the
96 deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago park commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand, gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces, and all fresh filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago park commissioners.

Here follows at pages 199 to 208 of the record, a recitation of the specifications and plans of said proposed improvement substantially as the same are set out in the record at pages 176 to 189, and heretofore in this abstract at pp. (134 to 147). (Same set out in petition as "Exhibit B.")

SECTION 4. That the supervisor of the town of West Chicago proceeded at once to file a petition in the name of the town in the county court of Cook county for proceedings to assess the cost of the

improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago park commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

STATE OF ILLINOIS, }
Cook County, Town of West Chicago, } ss:

I, Mortimer J. Scanlan, town clerk of the town of West Chicago, in the county of Cook and State of Illinois, do hereby certify that the annexed and foregoing is a true and correct copy of an ordinance adopted and passed by the corporate authorities of the said town of West Chicago, said corporate authorities being the town supervisor, the town clerk and assessor of said town, at a special meeting held for that purpose by said corporate authorities, at the town office of said town of West Chicago, on the 28th day of March, 1893, which said ordinance was on that day duly filed and entered upon the records of the said town of West Chicago.

MORTIMER J. SCANLAN,
Town Clerk.

97 Mr. MECARTNEY: Petitioners offer the petition of the town of West Chicago in the county court in case No. 10655, set forth on pages 126 to 151 of said abstract.

Mr. WILBUR: We object to the introduction of the petition on the ground that it is incompetent and immaterial. This proceeding, as appears by the record in this case already made, is an original proceeding, standing alone: that it is an original, independent proceeding, according to the statement of counsel in his brief and throughout his contention in this case. Now, if that were true the petition which he now offers is immaterial and incompetent, and it has been fully adjudicated by the parties whom I represent, and is fully out of the way, and has nothing to do with the case of the West Chicago park commissioners under the act of 1895.

Mr. MECARTNEY: It is offered to show that there were proceedings filed for special assessment, and that they were declared void; proceedings filed in pursuance of the ordinance and declared void.

The COURT: Objection overruled, so far as I can see.

Mr. WILBUR: I take exception to the ruling of the court.

Petition referred to is admitted in evidence as "Petitioners' Exhibit 2," and is as follows:

(The said petition in said cause No. 10655, in said county court, with the specifications, plans, and exhibits embodied therein and annexed thereto, and the ordinance of March 28, 1893, annexed thereto, are as follows:)

98 To the honorable the judge of the county court of said county:

Your petitioner, The Town of West Chicago, being a regularly organized and existing township in the county of Cook and State o

Illinois under and by virtue of the statutes of said State providing for township organization, respectfully petitions this honorable court, in accordance with the statutes in such case made and provided, as follows:

Your petitioner shows that the West Chicago park commissioners are a board of park commissioners now existing in a town which is now included within the limits of the city of Chicago and State of Illinois, having authority by law to acquire land and the appurtenances, in trust, for the inhabitants of such town and of a division or a part of such city, and of such parties or persons as may succeed to the rights of such inhabitants, and for the purpose of a public promenade and pleasure grounds and ways, but not for any other use or purpose without the consent of the majority by frontage of the owners of the property fronting on the same, and without the power to sell, alienate, mortgage or encumber the same, which board of park commissioners was duly organized under and by virtue of an act of the General Assembly of the State of Illinois, entitled "An act to amend the charter of the city of Chicago and to create a board of park commissioners and authorize a tax in the town of West Chicago, and for other purposes," approved and in force February 27, 1869, and of the acts and parts of acts amendatory thereto; that by the provisions of said act, the said board of West Chicago park commissioners was given full and exclusive power to govern, manage, and to direct all parks, boulevards and ways authorized by that act and by them purchased, made, laid out or established, to lay out, regulate, make and improve the same, pass ordinances and issue and enforce orders for the regulation and government of the same; to levy special assessments on all property by them deemed benefited by the purchase, opening and improvement of such parks, boulevards and ways as provided and limited by said act, and in general was given by said act power and authority to lay out, establish and improve parks, boulevards and pleasureways as described in said act; that in and by said act above mentioned, and by a subsequent act of the General Assembly of the State of Illinois, entitled "An act supplemental to an act to amend the charter of the city of Chicago, to create a board of park commissioners, and
99 authorize a tax in the town of West Chicago, and for other purposes, approved February 27, 1869," approved and in force April 19, 1869, it was provided that said West Chicago park commissioners should have the power and authority to locate the boulevard, promenade, driveway and pleasureway in such manner as in said act and supplemental act are more specifically described, so as to connect the several parks so authorized by said original and supplemental acts to be located.

That pursuant to the authority conferred upon said West Chicago park commissioners by virtue of said original and supplemental acts, such commissioners did locate a boulevard or pleasureway in the city of Chicago, Cook county, Illinois, and within the limits defined by said original and supplemental acts, between the southeasterly line of Barrypoint road, now known and designated as Colorado avenue, said Barrypoint road or Colorado avenue being

the southeastern boundary of Garfield park; and thence running south a distance of 4,250 feet, more or less; and thence east a distance of 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, said Douglas park being one of the parks located and established under and by virtue of said original and supplemental acts, and now under the management and control of said commissioners; that said boulevard or pleasureway so located and established by said commissioners connects Garfield park (the same being one of the parks so located pursuant to the provisions of said original and supplemental acts, and now under the management and control of said commissioners) with the said Douglas park, and that such connection by said boulevard between said Garfield and Douglas parks is acurately shown and de-
100 fined upon the route, plan and design indicated and specifically described in the drawings or maps hereto attached and marked "Exhibit A."

That in the location of said boulevard said commissioners were authorized by said acts above mentioned to locate the same in any part of the town of West Chicago, and in sections 14, 23 and 24, T. 39 N., R. 13 E. of 3d P. M., all of said sections lying and being situate in the town of West Chicago and within the city of Chicago, as set forth in said original and supplemental acts.

That the jurisdiction of said West Chicago park commissioners was, by said original and supplemental acts, made and now is absolute and undisputed; and it was further provided by said original and supplemental acts that said West Chicago park commissioners should have the right and authority to cause property benefited by the location of such boulevard, to be specially assessed to pay for the improvement thereof.

And your petitioner further shows that under and by virtue of the provision of the acts of the General Assembly, above cited, the said West Chicago park commissioners did proceed about the year 1869 and 1870 to lay out and acquire the lands necessary for the boulevards hereinabove designated and hereinafter more particularly described by the maps and plan hereto attached and heretofore referred to as "Exhibit A," and did acquire by condemnation, purchase, gift or otherwise, all of the lands included in said boulevard or pleasureway so described, and did enter upon the possession of the same during or about the year 1869 or 1870; that said commissioners did mark out the boundaries of said boulevard, and that said boulevard so acquired by said commissioners was defined as a piece or parcel of land not less than 250 feet in length at any point, nor more
101 than 400 feet in width at any point, as will be shown by maps and plans thereof hereto attached and so marked "Exhibit A."

That said commissioners have remained in possession and control of said boulevard or pleasureway from about the year 1870 hitherto, and that the same has never been improved as a boulevard or pleasureway and promenade as it was intended that the same should be improved, by the provisions of the said original and supplemental acts and other acts of the General Assembly of the State of Illinois, passed and approved subsequent to the said original and supple-

mental acts, nor according to the authority and power vested in said West Chicago park commissioners under an act of the General Assembly of the State of Illinois entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873; under and by virtue of which said act last cited the corporate authorities of towns in which any such parks or boulevards are located, were authorized to levy a special assessment or special tax on the contiguous property abutting on any such boulevard, for the purpose of paying the cost of improving the same; that said boulevard so proposed to be improved and so connecting Garfield park with Douglas park, is a part and parcel of the original boulevard and system of parks and pleasureways authorized and designated to be established and acquired by the West Chicago park commissioners by virtue of said original and supplemental acts, and was intended for the purpose of connecting said Garfield park with said Douglas park, according to the provisions of said original and supplemental acts.

102 And your petitioner further shows that said West Chicago park commissioners are now in control and management of said boulevard so proposed to be improved, and have been in the possession and control thereof for a period of more than twenty years; that all of said boulevard lies and is situated in the town of West Chicago, Cook county, Illinois.

And your petitioner further shows that the said West Chicago park commissioners, desiring to improve that certain boulevard hereinbefore described as Douglas boulevard or Douglas Park boulevard so extending south from the southeasterly line of Barrypoint road or Colorado avenue above mentioned, a distance of 4,240 feet, more or less, and thence due east to the intersection thereof with the west line of Douglas park, a distance of 4,490 feet, more or less, did carefully designate the line of said improvements and did prepare a plan or plans thereof, and did prepare estimates of the cost of such contemplated improvement, together with specifications therefor, and did transmit such plan, specifications and estimates to the supervisor, assessor and clerk of the town of West Chicago, in which said boulevard is located, said supervisor, assessor and clerk being the corporate authorities duly designated by said act of the General Assembly so approved May 2, 1873, as the corporate authorities of said town to levy a special tax or special assessment for the purpose of paying the cost of such contemplated improvement of said boulevard; that said West Chicago park commissioners also obtained the consent and authority in writing in due form of law of the owners of a majority of the property or land abutting upon said boulevard so proposed to be improved, by the said consent or petition of a

103 majority of such owners of the property or land so abutting upon said boulevard, the said West Chicago Park Commissioners were asked and petitioned to make such improvement according to the plans and specifications and estimate of the cost thereof so transmitted and presented by the said West Chicago

park commissioners to the supervisor, the assessor and town clerk as corporate authorities to carry out the purposes and objects of the said statute hereinbefore referred to as having been approved May 2, 1873.

And your petitioner further represents that said petition was found by said West Chicago park commissioners and determined by them to contain the consents and signatures and petition of the owners of a majority of the lots, lands and property fronting and abutting on said Douglas boulevard or Douglas Park boulevard so proposed to be improved, to the making of such improvements, and to the making and levying of a special tax or special assessment upon the property abutting on said boulevard, for the purpose of paying the cost of such improvement as proposed.

And your petitioner further represents that the said supervisor, assessor and clerk, the duly designated and constituted corporate authorities of the town of West Chicago as aforesaid, also found that the owners of a majority of the property, lots and land fronting and abutting on said boulevard between the south line of Barrypoint road or Colorado avenue, running south a distance of 4,250 feet, more or less, thence east a distance of 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, in said city of Chicago, had in fact consented to the improvement of said boulevard as and for a boulevard and driveway according to the plans and specifications so transmitted and presented to said corporate authorities of the town of West Chicago, as aforesaid, and to the making and levying of a special assessment or special tax upon the property, lots and lands contiguous to and abutting upon said boulevard so proposed to be improved, for the purpose of paying the cost of said improvement, the cost and expenses of making, levying and collecting the same, and that the owners of a majority of the property so fronting or abutting on said boulevard had petitioned and requested said West Chicago park commissioners, so being in the control and management of said boulevard, to make said improvement and to cause a special assessment or special tax to be levied on the property abutting on said boulevard, for the purpose of paying the cost thereof; and that the proceedings therefor and in that behalf should be conducted and carried forward in pursuance of the provisions of the act of the General Assembly of the State of Illinois, entitled "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1, 1873, and in pursuance of any and all other statutes of the State of Illinois in such case made and provided, for the purpose of making, completing and paying for the improvement of said Douglas boulevard according to said plans, specifications and estimates.

104–118

The plan of said improvements so to be made upon said Douglas boulevard hereinbefore referred to as "Exhibit A" follows herewith and is made a part hereof:

The specifications so made by said West Chicago park commis-

sioners and so transmitted and presented to said corporate authorities of said town of West Chicago herewith follow, and are marked "Exhibit B," and made a part hereof.

* * * * * * *

119 "EXHIBIT C."

Estimate.

Estimate of approximate cost of the improvement of side driveways and lawns on Douglas boulevard from Douglas park to Garfield park, according to "Drexel Boulevard plan," with one driveway asphalt pavement and one driveway granite macadam (60 feet wide) on each side.

46,234 cu. yds. of common filling at 50c. per yd	$23,117 00
5,832 cu. yds. of black soil at 75c. per yd	4,374 00
2,250 sq. yds. macadam pavement at $1.25 per yd	2,812 50
120 33,440 lin. feet of "curb and cutter" at 75c. per ft	25,080 00
36,137 sq. yds. asphalt pavement at $3 per yd	108,411 00
35,875 sq. yds. granite-surface road at 85c. per yd	30,493 75
136,760 sq. ft. cement sidewalk at 20c. per ft	27,352 00
344 lamp posts and lamps at $18 each	6,192 00
575 trees at $8 each	4,600 00
84 catch-basins at $30 each	2,520 00
4,200 lin. ft. of 9-in. pipe connections at 40c. per ft	1,680 00
22,200 sq. yds. lawn seeding at 2c. per yd	444 00
For superintendence, engineering, etc., 10 per cent	23,707 60
Total	$260,783 85

Frontage, 15,715 feet.
Amount per front foot, 16.59\frac{4}{10}$.
Chicago, February 21, 1893.

Your petitioner further shows that upon the transmission and presentation by said West Chicago park commissioners of said plans, specifications and estimates, by the corporate authorities of the town of West Chicago, and of the receipts by said corporate authorities of said town of the plans, specification- and estimates, the corporate authorities of said town of West Chicago, constituted as provided by law of the town supervisor, the town assessor and the town clerk of said town, at a special meeting called for that purpose, and held at the office of said town of West Chicago, *and* the 28th day of March, 1893, the said corporate authorities determined by ordinance
121 duly adopted and passed by said town authorities, and entered upon the records of such town, that such improvements as were described in the plans, specifications and estimate so transmitted and presented to said corporate authorities of said town, as above stated, should be made, pursuant to the statute in such cases made and provided, and that the expense of such improvement

should be raised wholly by special assessment upon the property contiguous to and fronting or abutting upon said boulevard so proposed to be improved; which said ordinance recited the transmission of the said plans, specifications and estimates by the said West Chicago park commissioners to said corporate authorities of the town of West Chicago and embodied the substance thereof, heretofore shown as having been transmitted and presented to said corporate authorities of said town of West Chicago by said West Chicago park commissioners, and that said ordinance provided that such improvement of said Douglas boulevard or said Douglas Park boulevard from the southeasterly line of Barrypoint road or Colorado avenue, running thence south a distance of 4,250 feet, more or less, and thence east a distance of 4,490 feet, more or less, to the intersection thereof with Douglas park, in said city of Chicago, should be made, and that the cost of said improvement so contemplated should be paid from the money raised from a special assessment upon the contiguous property fronting and abutting upon the said boulevard so proposed to be improved, as is by the statutes of the State of Illinois in such case made and provided.

And your petitioner further shows that said ordinance further directed the supervisor of the said town of West Chicago as the only constituted officer of the corporate authorities of said town
122 for that purpose, to file a petition in the name of the town of West Chicago, in the county court of Cook county as provided by law, for such proceedings as might be necessary to assess and levy a special assessment for the cost of such improvement upon the property, lots and lands fronting and abutting upon said Douglas boulevard or Douglas Park boulevard as aforesaid, the certified copy of which said ordinance is hereto annexed, filed herewith and marked "Exhibit D," and made a part of this petition.

And your petitioner further shows, and it will more fully appear to this honorable court by reference to the map or plan of said contemplated improvement, that the same is one whole, continuous and regular improvement of a single boulevard lying wholly within the town of West Chicago, and within the park district subject to taxation and assessment for park and boulevard purposes.

And your petitioner further shows by reference to the estimates of the cost of such boulevard improvement, that the estimate of the cost thereof aforesaid was and is prepared, made up and presented to said corporate authorities of said town of West Chicago by said park commissioners, as the estimate of said West Chicago park commissioners for the cost of said contemplated improvement.

* * * * * * *

And your petitioner therefore respectfully prays, pursuant to the provisions of the statute hereinbefore referred to as having been approved May 2, 1873, that this honorable court will take cognizance of this petition for the purposes hereinbefore set forth, and this honorable court will appoint commissioners, pursuant to the provisions of said act of the General Assembly, to assess the cost of such

improvement to be made upon said boulevard as aforesaid
123 upon the property contiguous to and abutting thereon, in the proportion as each separate lot, piece or parcel of property or land so abutting and fronting thereon may be benefited by such improvement, and in such manner as is required by law in such cases made and provided, and that the commissioners so to be appointed by this honorable court may make and levy such special assessment or special tax for the cost of such contemplated improvement as hereinbefore described and set forth, and that such commissioners shall make and return to this honorable court an assessment-roll in the manner provided by law, in which assessment-roll the amount of the special assessment or special tax so assessed and levied by such commissioners so to be appointed, upon the property contiguous to said boulevard, shall be stated and set forth in proper and appropriate columns.

And your petitioner further prays that said special assessment so to be made by such commissioners upon the contiguous property so fronting and abutting on said boulevard so to be improved may be divided by the order of this court into installments, the first of which shall be twenty per cent. of the total of said assessment so to be levied against each separate piece of property, lot or land so abutting on said boulevard so to be improved, which installment of twenty per cent. shall be due and payable on and after the date of confirmation of said special assessment; and that the remainder of the amounts so to be assessed shall be divided into four equal installments, payable annually thereafter, and each of said four installments shall bear interest at the rate of six per cent. per annum from the 1st day of October, 1893, as provided by law.

And your petitioner further prays for such other and further proceedings in the premises as are provided by law, and for such orders, directions and proceedings by this honorable court, as may be necessary or requisite for the proper levy and collection of said special assessment or special tax so to be made to pay the cost of said contemplated improvement.

And your petitioner will ever pray, etc.

TOWN OF WEST CHICAGO.
By FRANK J. NIEHOFF, *Supervisor.*

FRANCIS A. RIDDLE,
Attorney for Petitioner.

Here follows ordinance, given above as Petitioners' "Exhibit" 1.

124 Mr. MECARTNEY: It is conceded that the decision in the case of People *vs.* Culver, 161 Ill., page 89, declaring an ordinance void in regard to Douglas boulevard special assessment affects the ordinance which is offered and the proceeding in which this petition was filed, and related to this identical proceedings declared void.

Mr. WILBUR: I will concede that, but I depend upon three other decisions.

Mr. MECARTNEY: There is no objection, I take it, as a concession

from all of you that the Culver decision affected this identical proceeding, and that ordinance which has just been offered.

(There was no objection and all counsel present conceded the fact.)

GEORGE W. DORR, a witness called on behalf of the petitioners, having been first duly sworn, was examined in chief by Mr. Mecartney, and testified as follows:

Mr. WILBUR: I object to the introduction of oral testimony at this time.

Q. What is your name?
A. George W. Dorr.
Q. Have you been connected with the West Park commissioners?
A. Yes, sir.
Q. In what capacity?
A. Engineer—civil engineer.
Q. Did you have anything to do in that capacity with the laying down of the improvement on Douglas boulevard from Garfield park to Douglas park?
A. Yes, sir.
Q. What did you have to do with it?
A. I had the whole improvement from the time I went there until I left there in 1896, I think it was; in 1897 I left there.
Q. In what capacity?
A. I had charge of the entire work of improving Douglas boulevard.
Q. Has that work been completed or not? Has that improvement been laid down?
A. Yes, sir.
125 Q. When was it completed, or about when?
A. I think it was completed in the latter part of 1895; that is my recollection.
Q. It started about when?
A. About 1893; different portions of it went down at different times; it was not all simultaneously.

Cross-examination.

By Mr. WILBUR:

Q. Do you know the month in which that improvement was started?
A. In which that improvement was started?
Q. Yes.
A. Well, which part of the improvement?
Q. Any part of it. When was the first work done on the improvement?
A. I think it was in 1894—May, I think, of 1894.
Q. The first dirt was turned in May, 1894?
A. No, not the first dirt turned. They were putting in dirt in the winter preceding that. The filling began in 1893.

Q. That was the filling for the lawn, was it not?
A. No, sir.
Q. Filling for the sides?
A. For the sides; yes, sir.
Q. You say in the fall of 1893?
A. Yes, sir.
Q. Why do you say it was commenced in May, 1894?
A. Well, because actual work on the curbing began in May.
Q. When was the last work done?
A. I think about the fall of 1895; last part of 1895.
Q. Are you quite positive as to the time of the commencement and completion of this work within a day or so?
A. Yes, sir.
Q. Was the work carried on continuously during those years?
A. Yes; carried on right along, but went on slowly.
Q. That would be the winter of 1893 and 1894 and the summer of 1894 and fall, and through that winter up to the fall, rather, of 1894?
A. 1895.
126 Q. In the fall of 1895?
A. Yes, sir.
Q. You were there all of the time?
A. Yes, sir.
Q. The work covered about the space of two years?
A. Nearly three years—about three years; yes, sir.
Q. Can you give us the month in which this work was commenced?
A. I think in September or October, 1893, the filling began. I will not be positive about that. I haven't my notes here.
Q. Can you furnish us that date?
Mr. MECARTNEY: Yes; I will furnish that. It was either then or later.
A. It was not earlier, and I know the date of finishing is correctly stated. It was in the fall of 1895.
Q. Then, in 1895 everything was all done, even to the grass plats in the centre and trees and everything? It was finished, this work, in the fall of 1895, was it?
A. Yes, sir.
Q. You mean by that the sidewalks were laid and all the curbing and everything?
A. Yes, sir.
Q. There was nothing more to do in regard to any matter involved in this assessment?
A. I think the work was completed in the fall of 1895. That is my recollection.
Q. Everything involved in this assessment?
A. Everything involved in this assessment; the lawn space between the two trees and everything done; a little shaping up, possibly, but that is not in this case.

Mr. MECARTNEY: I offer now from the certified printed copy of

the proceedings of August 4, 1896, in which it is recited upon the face of it, "Official record, published by authority of the board of West Chicago park commissioners," an ordinance, estimate, and resolution of that date, referred to in the petition in this present case, pages 1700 and 1701, comprise the offer, with the first page, showing the date of the proceedings, as "Petitioners' Exhibit 3."

127 Mr. GRIMSTEAD: I object to that because the petition sets out the fact that the ordinance under which the petition was filed was passed on the 14th of July.

Mr. MECARTNEY: That is right. I want to prove that variance in the statement, and ask leave to amend the statement in the petition. The date is misstated.

The COURT: You have a right to amend that petition without evidence on that.

Mr. MECARTNEY: I will not draw the order now, but I can do that later.

Mr. WILBUR: I object to the introduction of the ordinance on the ground that it is incompetent and insufficient because it does not state the nature, character, locality, or description of the improvement.

Objection overruled; to which ruling of the court counsel for objectors then and there duly excepted.

Said ordinance, being "Petitioners' Exhibit 3," is as follows:

Ordinance of West Chicago Park Commissioners, Passed August 4, 1896.

128 An ordinance for a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the West Chicago park commissioners, in regular meeting assembled:

SEC. 1. That whereas the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago park commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the county court of Cook county, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case number 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special-assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore and on the 28th day of March, A. D. 1896, declared void by the supreme court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black-earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers, and superintendence of work: Now

129 Therefore, be it ordained:

SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such costs be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th, and in force July 1, 1895.

SEC. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SEC. 4. This ordinance shall be in force from and after its passage.

"Be it resolved and ordered, That the following estimate be adopted as the estimate of this board, of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park, to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost of said improvement, in accordance with the act in said ordinance mentioned.

Estimate of Cost of Improvement and Report Thereon.

The following is an estimate made by the West Chicago park commissioners of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago; said estimate being made in pursuance of an ordinance of the West Chicago park commissioners, passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement; which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners relating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

130 *Estimate.*

Asphalt paving	$110,420 71
Macadam paving	35,087 81
Combined curb and gutter	28,045 34
Cement sidewalk	24,262 26
Filling	17,290 20
Trees	1,110 30
Catch-basins and connections	3,819 59
Gas-lamp connections	2,106 00
Manhole covers, sand, cement, brick, pipe, general labor, teaming, engineering, surveying, and inspection.	19,770 51
Expense of making and levying this assessment	7,287 59
Total cost of improvement	$250,207 20"

131 Mr. MECARTNEY: Now, on preliminary hearing before the court, I guess that is all.

The COURT: Are there any notices to be introduced?

Mr. MECARTNEY: I will offer the notices and proof of publishing, posting and mailing, and files.

(Said notices so offered in evidence, together with the files, are made a part of the record prepared by the clerk herein, and are made a part hereof.)

Mr. WARD: On behalf of the objectors represented by me, I desire to file a written motion. I move the court to dismiss the petition herein, first, because petitioners have failed to prove all the material allegations contained in said petition; second, the evidence introduced by petitioners is not sufficient to sustain such petition and proceedings; third, that the evidence introduced by the petitioners is insufficient to warrant and support a judgment of confirmation.

Said written motion is as follows:

The objectors, A. S. Farber *et al.*, by James R. Ward, their attorney, move the court to dismiss the petition herein filed and arrest the proceedings thereon:

1. Because said petitioners have failed to prove all the material allegations contained in said petition.

2. Because the evidence introduced by the petitioners is not sufficient to sustain said petition and proceedings.

3. Next, the evidence introduced by the petitioners is insufficient to warrant and support a judgment of confirmation against the several pieces of property owned by these objectors, and those objectors hereby join herein. Wherefore, etc.

132 Mr. WILBUR: I adopt the motion by Mr. Ward.

Mr. QUINBY: I do the same.

Mr. BREEDEN: It is understood objections filed by one objector apply to all.

The COURT: You are entitled to file separate motions or all can follow the motion of one, but as to verbal objections I will allow you all to take advantage of that filed by any one.

Motion overruled; to which ruling counsel then and there excepted.

The COURT: What is your point, Mr. Quinby?

Mr. QUINBY: It is that the park commissioners have not obtained a majority of the frontage for the improvement.

NATHAN G. MOORE, a witness called on behalf of objectors, having been first duly sworn, was examined in chief by Mr. Quinby, and testified as follows:

Q. What is your name?
A. Nathan G. Moore.
Q. Are you an attorney-at-law?
A. Yes, sir.
Q. A member of the firm of Wilson, Moore & McIlvaine?
A. Yes, sir.

* * * * * * *

Mr. WILBUR:

Q. Were you present in court at the time of the disposition of the original proceedings for the improvement of Douglas boulevard, known as 10655?
A. Yes, sir.
Q. And you met the attorney, Mr. Riddle, the attorney for the park board?
A. Yes; two attorneys, Mr. Riddle and Mr. Prendergast.
Q. Was there exhibited in court at that time what pretended to be or purported to be a consenting petition for the making of this boulevard?

Objected to as immaterial and irrelevant.

133 A. Yes, sir.
Q. Did you see that petition?
A. Yes, sir.
Q. And was it examined by yourself?
A. I looked it over; yes, sir. I did not examine it with any great care.
Q. Did you have a conversation with Riddle in regard to that petition?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Did Mr. Riddle make a statement in regard to the sufficiency or insufficiency of that petition?

Objected to as immaterial. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Was there any effort made on the hearing of that case to prove the sufficiency of the petition offered at that time?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Did that petition on its face purport to contain the majority

in frontage in feet along the improvement signed by the property-owners?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Mr. WILBUR: I now call upon the attorney for the park board to produce the original petition.

Mr. MECARTNEY: Produce it yourself.

Mr. WILBUR: I want a rule on the petitioner to produce the original consenting petition. It is within his power.

The COURT: I cannot make any order of that kind. There is a way for you to get such papers in if you want them.

134 FRANCIS T. COLBY, a witness called on behalf of the objections filed by him, having been first duly sworn, testified as follows:

My name is Francis T. Colby. I am of lawful age and an attorney-at-law. I reside in Chicago.

* * * * * * *

Mr. WILBUR:

Q. Were you in court when the order of reduction in the original assessment, known as 10655, was entered?

A. Yes, sir.

Q. Did you represent property involved in that order?

A. Yes, sir.

Q. Was Mr. Riddle in court?

A. Yes, sir.

Q. Did you see the consent petition in the original proceedings?

Objected to.

The COURT: It is not material. If there is anything in the point at all the petition speaks for itself. This is secondary evidence and wholly incompetent.

Q. Did you have any conversation with Mr. Riddle in regard to that consent petition?

A. Yes, sir.

Q. State what Mr. Riddle said in regard to that.

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Was the consenting petition ever offered in evidence at the time of the entry of the order?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Mr. COLBY: You haven't got that petition here?

Mr. MECARTNEY: No.

Mr. COLBY: Where is that?

Mr. MECARTNEY: I haven't seen it for a long time.

135 Mr. MECARTNEY: Let the plans in the original petition in case No. 10655, being the original assessment proceedings, be

considered as a part of the offer of said petition made on the part of the present petitioners yesterday, if there is no objection.

Mr. WILBUR: Then you have offered the whole ordinance. Do you offer the estimate?

Mr. MECARTNEY: Yes.

Mr. WILBUR: And the resolution?

Mr. MECARTNEY: Yes.

Mr. WILBUR: I have an objection as to the sufficiency of the estimate. This estimate is not signed and it contains things which cannot be made the subject of a special assessment.

The COURT: What are the matters?

Mr. WILBUR: Trees, gas-lamp connections, manhole covers, sand, cement, brick, pipe, general labor, engineering, surveying, and inspection. I further object to the estimate because it is not signed by the petitioner, and further because it was not adopted by the resolution as required by the law under which we are proceeding, which is preliminary to the filing of the petition.

Mr. MECARTNEY: The resolution was offered yesterday.

The COURT: All those things are subjects of special assessments for local improvements. If the ordinance provides for them it is sufficient, and the offer shows that they adopted that.

Mr. WILBUR: I offer in evidence a certified copy of the order entered in the county court in case No. 10655, which order was entered the 12th of March, 1897.

Order referred to marked "Wilbur Exhibit 1," and is as follows:

136 In the County Court of Cook County, Illinois.

In the Matter of the Petition of the Corporate Authorities of the Town of West Chicago for the Appointment of Commissioners to Make an Assessment to Pay the Cost of the Improvement of Douglas Boulevard from the Southeasterly Line of Garfield Park to the West Line of Douglas Park, in the Town of West Chicago, Cook County, Illinois.

Now, on this day, come the owners of certain real estate hereinafter described, by George W. Wilbur, their attorney, and file herein certain remanding orders from the supreme court of the State of Illinois, in which the judgment of confirmation in the above-entitled suit is reversed and said matter remanded, said causes being known in the supreme court as Thomas F. Farrell *et al. vs.* Town of West Chicago—general No., 3737; James Connor *et al. vs.* Town of West Chicago—general No., 3767—and Mary White *et al. vs.* Town of West Chicago—general No., 4259—and move the court that said cause be redocketed in this court in so far as it relates to the property hereinafter described; and the court being fully advised in the premises, it is ordered that said remanding orders may be filed herein and said cause redocketed in so far as it relates to the property hereinafter described.

And now again, on this day, come the said parties, by their said attorney, and move the court to expunge from the record herein a

certain order entered in the above-entitled cause on or about the 3rd day of October, 1896, in so far as said order relates to the property described in this order, in which order said petitioner at-
137–159 tempted to annul and set aside and have held for naught all proceedings in the above-entitled matter, and it appearing to the court that said order was entered inadvertently as to such property, and that the court had no jurisdiction in the premises, it is ordered that said order be exponged from the records of this court in so far as it relates to the property hereinafter described.

And now again come said parties, by their said attorney, and move the court to enter an order herein in accordance with the opinion of said supreme court relating to the property hereinafter described, and the court being fully advised in the premises, it is ordered and adjudged that the judgment of confirmation in the matter of said special assessment, in so far as it relates to said property hereinafter described, be set aside and held for naught; and—

It is further ordered and adjudged that all proceedings in the above-entitled matter, in so far as they relate to the property hereinafter described, be set aside and held for naught. It appears to the court that this court was without jurisdiction in the premises to enter an order or to take any proceeding at any time in said matter as to said property herein described.

The property hereinabove referred to, together with the names of the owners thereof respectively, is described as follows, to wit:

160 * * * * * * *

Mr. WILBUR: I have nothing further to offer. I don't know whether everything is preserved in the motion, but I will renew the motion on behalf of the objectors that I represent that the
161 court sustain the objections and dismiss the proceedings on the grounds that I have stated in my argument.

Mr. MECARTNEY: Counsel for the petitioner insists that they have been passed on.

Mr. WILBUR: I have argued two or three new ones.

The COURT: If the objections were in any shape. Part were filed before and part are new.

Mr. WILBUR: I ask the court to bring the objections in here by tomorrow morning.

Mr. MECARTNEY: I make this suggestion. Counsel has covered everything that he wants. He has covered about everything that he could cover.

The COURT: The objections are what the supreme court looks at, and not what counsel argues here.

Mr. WILBUR: I offer in evidence the agreement in case No. 10655, signed Francis A. Riddle and Myron A. Decker.

Objected to as incompetent and immaterial.

Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Mr. MECARTNEY: In regard to these new objections of Mr. Wilbur, to save time, if there can be a ruling on all these preliminary objections, I will not object to these being filed.

The COURT: I will allow them to be filed. I cannot cull them out.

The COURT: There is no evidence on this hearing on any of these matters to sustain any of these objections. It depends upon the admission of testimony, in my judgment, and I am satisfied, from all I can hear, and we have gone into it very fully, that no objections have been made here that are sustainable. The only thing I am in doubt about is on that question of consent. How far, in
162 subsequent proceedings, an objector has the right to come in and take advantage of that prior consent, and since counsel have cited no authorities to me bearing specifically on that point, I think I am justified in overruling the legal objection, subject to the right of Mr. Breeden and of this other gentleman (referring to Mr. Robertson).

Mr. BREEDEN: You do not pass upon the objections that I now make at all.

The COURT: I reserve that matter.

Mr. GRIMSTEAD: Let the record formally show an exception on behalf of all the objectors to the order of the court overruling the legal objections.

Adjourned to 9.30 a. m., May 20, 1898.

FRIDAY, *May* 20, 1898—9.30 a. m.

Court met pursuant to adjournment.

Appearances: Mr. H. S. Mecartney, representing the petitioner; Mr. George W. Wilbur, representing certain objectors.

Mr. MECARTNEY: We are ready to proceed with the trial on the merits.

Mr. WILBUR: In my talk the other day I was interrupted a number of times, and there is one point which is very important to us and which I spoke of——

The COURT: Well, your objections have all been overruled. Now we are ready for the jury trial.

Mr. WILBUR: I want to enter an exception to the order of the court overruling the legal objections filed herein on behalf of the objectors represented by myself, George W. Wilbur. I want to enter a motion to dismiss the petition herein on the ground that
163 & 164 the petitioners herein have not made a *prima facie* case.

The COURT: File the motion in writing; then we will know what we are getting at. You have got one motion in writing to that effect.

Mr. MECARTNEY: Petitioner is ready to go to trial on the merits if any one wants a jury.

Mr. WILBUR: We will take a jury. Will your honor permit me to introduce one or two matters of record in the original case which I omitted? I think one of them was introduced by the counsel on the other side.

The COURT: What are they?

Mr. WILBUR: Did you introduce the entire petition in the original case?

Mr. MECARTNEY: I did.

Mr. WILBUR: With everything that is in it?
Mr. MECARTNEY: That is right.

* * * * * * *

165 Mr. WILBUR: It is conceded that all exhibits attached to the petition in 10655 are a part of the petition and are offered by you?
Mr. MECARTNEY: Right.
Mr. WILBUR: It is conceded that the exhibits attached to the petition are true and state the facts?
Mr. MECARTNEY: I don't know whether they are true or not.
Whereupon a jury was impaneled to try the issues on the merits as to the property objected for herein by George W. Wilbur, and the jury, having been duly sworn to try issues on the merits, were sent by the court to view the property.
The following proceedings were thereafter taken.
Adjourned to 10.00 a. m. May 24, 1898.

MAY 24, 1898—10.00 a. m.

Court met pursuant to adjournment.
The jury having been completed, the court directed the jury to view the premises involved in the assessment, in the charge of an officer of the court.
Thereupon the court adjourned until Wednesday, May 25, 1898, at 10.00 a. m.

166 WEDNESDAY, *May* 25, 1898—10.00 a. m.

Court met pursuant to adjournment.
Present: The same counsel as of yesterday.
Mr. WILBUR: If the court please and gentlemen of the jury, you know what this assessment is about. Now, the point to be determined is, who shall pay for it, and, after determining that, how much should be paid, if anything? Our evidence in this case will be that the park board has charged against the cost of this improvement a great many thousand dollars which did not go into the improvement at all.
Mr. MECARTNEY: That is objected to as incompetent; that should have been shown before the court, if there was any such. That is objected to as a statement that is entirely malicious and misleading.
The COURT: It is improper. The only question is, is the property assessed more than it will be specially benefited; and second, is it assessed more or less than its proportionate share of the cost? Those are the only two questions.
Mr. WILBUR: Second, we will show the property of the objectors, a large part of them, is assessed two or three times the cost of the improvement that is put down in front of their property.
Mr. MECARTNEY: That is objected to as entirely improper also.
The COURT: Yes; the jury have nothing to do with the question of costs.
Mr. WILBUR: That goes to the question of benefits.
The COURT: The jury have nothing to do with whether it costs much or little.

Mr. WILBUR: Does your honor hold I cannot show that the property on one side of the street is not benefited more than the cost of the improvement, and the park board made a profit on it?

167 The COURT: Mr. Wilbur, I have already ruled that this jury tries two issues: First, is the property assessed more than it will be benefited? Second, is it assessed more than its proportionate share of the cost of the entire improvement? Those are the two questions you have got to try.

Mr. WILBUR: I offered evidence on the hearing of the legal objections and asked questions as to the difference between the cost of the asphalt and the macadam, and you said that went to the question of benefits, and my question was excluded.

The COURT: No; I remember distinctly; I asked you why you offered that kind of evidence, and you said it was on the question of the proportionate share of the cost. I said that is a question for the jury.

Mr. WILBUR: I did that for the purpose of showing one improvement was worth three times as much as the other.

Mr. MECARTNEY: I object to that statement. Counsel ought to know better than to make such statements as that.

Mr. WILBUR: That is the point I make, that it is more than it has cost.

The COURT: That is not the question. You are not trying whether it has cost more than it ought to. The only question is, is it assessed more than its proportionate share? You have got to get the proportion in there.

Mr. WILBUR: So we get back to the question what did it cost.

The COURT: I hold that you cannot show what it cost. It is not for the jury to try, and I don't want the jury to get mixed up.

168 Mr. WILBUR: I take an exception to the ruling of the court, and I will call Mr. Dorr.

Mr. MECARTNEY: Wait until I get through. Petitioner offers certified copy of the ordinance of August 4th, 1896, which was offered on the preliminary hearing before the court, and marked "Petitioners' Exhibit 3."

Mr. WILBUR: I object to the introduction of the ordinance on the ground, that it is incompetent, irrelevant, insufficient, and does not state the nature, character, locality, or description of the improvement. I object also to the ordinance because, as a part of the ordinance or attached to it, is a supposed estimate of the cost of the improvement, which is no part of the ordinance itself, and ask to have that portion of the ordinance excluded.

Mr. MECARTNEY: That was not offered, and hence it can be considered excluded.

The COURT: Mr. Wilbur says it is a part of the ordinance; is that a fact?

Mr. MECARTNEY: Not at all.

Mr. WILBUR: Let it be excluded by mutilation of the ordinance.

The COURT: He has not offered it.

Mr. WILBUR: I further object to the introduction of the ordinance

because it is not certified. The certificate goes to a large portion of the proceedings, and it is not confined to the ordinance offered.

Mr. MECARTNEY: The greater includes the less. The certificate includes all the proceedings of August 4th, and amongst them is the ordinance.

The COURT: Objection overruled.

Mr. WILBUR: Exception.

Mr. MECARTNEY: I offer the assessment roll in the case.

169 Mr. WILBUR: I object because it does not comply with the ordinance which has been offered in evidence; also because it is incompetent and insufficient.

The COURT: In what way do you claim it does not comply with the ordinance?

Mr. WILBUR: The assessment-roll provides for a certain improvement which is not provided for in the ordinance. There is nothing in this assessment-roll to show what the improvement is for.

Mr. MECARTNEY: Now I offer the original ordinance of March, 1893, of the town board, providing for this improvement; the same document as was offered on the preliminary hearing set forth on page 151 of the printed abstract in the West Park Commissioners *vs.* Farber in the supreme court in this case.

Mr. WILBUR: I object to the ordinance as incompetent and immaterial and because it is not properly certified.

Mr. MECARTNEY: We last week conceded this page set out the exact ordinance, and counsel made no objection before the court. Now, if he wants to make the same objection now, we will go and get it certified, but then I ask to introduce it later.

Mr. WILBUR: I will object to it and withdraw the objection as to the certification.

The COURT: Objection overruled.

Mr. WILBUR: Exception.

Mr. WILBUR: I want to move now that the court instruct the jury to find for the objectors in this case on the ground that the petitioners have not made out a *prima facie* case; that the proceedings at this point have not complied with the statute under which they are now being carried on. There is nothing before the court or the jury to show the cost of this improvement. No estimate is introduced in evidence here as the basis of the

170 ordinance. The estimate precedes the ordinance. The ordinance was the second ordinance introduced, and it does not contain or show the nature, locality, character, or description of the improvement; that part is entirely excluded from the ordinance offered in evidence. There are no specifications or plans before the court or jury to show what the improvement is for. The estimate is required by the statute, and it is not introduced in evidence at all. The statute under which we are proceeding makes the estimate and its certification a preliminary to the passage of the ordinance. The ordinance without the estimate is void. I ask that the jury be instructed to find for the objectors.

The COURT: I didn't hear any exception to the old ordinance.

Mr. WILBUR: The exception is made in the ordinance itself.

Mr. MECARTNEY: If there is any dispute about it I will turn back, but I will say that I stated I offered the original ordinance of March 28th as it was offered on the preliminary hearing before the court, and I stated that in the body of the ordinance, pages 153 or '4, I think it is, the specifications are set forth on other pages, and hence not necessary to repeat, and those other pages are a part of this offer.

The COURT: I don't think there is anything in the point. I will overrule it.

Mr. WILBUR: Exception.

171 GEORGE W. DORR, a witness called on behalf of the objectors, having been first duly sworn, was examined in chief by Mr. Wilbur, and testified as follows:

Q. What is your name?
A. George W. Dorr.
Q. What is your business?
A. Civil engineer.
Q. How long have you been a civil engineer?
A. About twenty years.
Q. How long have you resided in Chicago?
A. Twelve years.
Q. Have you held any official position in Chicago?
A. Yes, sir.
Q. What?
A. I was with the city of Chicago as chief engineer in the street department in 1892 and 1893, and engineer of the West Park commissioners from October, 1892 (?), to the spring of 1897.
Q. Are you familiar with Douglas boulevard?
A. Yes, sir.
Q. From Garfield to Douglas park?
A. Yes, sir.
Q. Did you take part in the construction of the boulevard?
A. Yes, sir.
Q. State generally what the boulevard is, giving dimensions and the elements that enter into its construction.
A. The boulevard proper is a strip of land running from Garfield park southward and, turning east, runs eastward to Douglas park. It is 250 feet in width. There are two driveways constructed on that portion of the boulevard. The driveways proper are 40 feet between curbs. The inner line of the curb is twenty feet from the park lawn and the other one is forty feet more, making sixty feet from the property line. There is a sidewalk space on either side eight feet in width. The sidewalk is paved with limestone, concrete, and granite on top. The curb and gutter is composed wholly of granite and cement, and the macadam improvement is composed of limestone rolled with granite finish. The asphalt improve-
172 ments are concrete base with asphalt top. That is substantially the improvement on Douglas boulevard.
Q. Whereabouts is the macadam improvement located?

A. The macadam drive is on the west side of the north and south boulevard and on the north side of the east and west boulevard.

Q. How many cubic feet of macadam driveway is there on the north and south portions of the boulevard?

A. How many cubic feet?

Q. Or yards.

A. I could not tell how many cubic yards in the improvement.

Q. What are the surface dimensions?

A. The lineal feet? I can tell you what the lineal feet of each improvement is.

Q. How much on the north and south boulevard?

A. If I had my memorandum; I could not tell you off-hand. I can figure it by a memorandum.

Mr. MECARTNEY: May I ask the purpose of this proof?

Mr. WILBUR: I want to get the amount of that kind of improvement.

The COURT: That is, the total cost?

Objected to.

The COURT: It is improper.

Mr. WILBUR: The macadam improvement.

Mr. MECARTNEY: If it is for that purpose, I object and ask a ruling.

The COURT: I will sustain the objection.

Q. Have you figured out, Mr. Dorr, the cost per front foot on the curb line of the macadam improvement?

Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. Have you figured out the cost of the asphalt improvement that appears in this boulevard on the main line?

Objected to.

Q. Make your estimate from the curb line of the curbs to
173 the centre lawn in the boulevard.

Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. I will ask you whether or not the improvement as constructed at the juncture of the east and west and north and south boulevard is in accordance with the plans and specifications for its construction.

Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. I will ask you whether or not the north curb line of the lawn on the east and west boulevard is sixty feet from the lot line on the east end of the boulevard improvement.

Mr. MECARTNEY: I cannot make any sense out of that.

Q. I will ask you whether or not the north curb wall line in the east and west boulevard is parallel with the lot line of the lots facing south on the east and west boulevard.

A. Parallel lines?
Q. Yes.
A. No, sir.
Q. What is the variation?
A. Well, it varies, I think, along there. It does not run exactly parallel with the boulevard lines. I don't know exactly what the variation is.
Q. About what is the variation from the eastern extremity of the north curb wall line?
A. The north curb, you mean?
Q. Yes; the curb that forms the boundary of the centre lawn.
A. There is a variation there. I don't remember what it is. I couldn't tell you. It is three and a half or four feet, I should think, from being on a parallel line from the west end.
Q. What is the condition at the east end of the same wall?
A. That is what you asked me.
Q. The west end?
A. The west end is right.
Q. Then what is the effect of having the curb wall out of line?
A. There is no curb wall on that street.
174 Q. I mean the curb next to the lot, the combined curb and gutter.
A. What is the effect?
Q. Yes; what shape does it leave the driveway on that side?
A. The driveway has the same width all the way through.
Q. Where does the variation come; in the lots on the side, the lots outside of the centre lawn?
A. The lawn on the east end of the boulevard is a very little wider than it is at the west end on the east and west boulevard than on the north drive. The south drive is practically correct—parallel line all the way through.
Q. Did you have sole charge of the construction of this boulevard?
A. Yes, sir.
Q. Did all estimates of the cost of the boulevard made to contractors come through your hands?
A. Yes, sir.
Q. Do you know the cost of each of the elements of the boulevard?
A. Under the contract?
Q. Yes.
A. Yes.
Q. Do you know the cost of the macadam portion of this boulevard?

Objected to as incompetent and immaterial. Objection sustained.

Q. Are you familiar with the cost of macadam improvements in the city of Chicago, such as Douglas Boulevard improvement?
A. Yes, sir.
Q. Are you familiar with the cost of asphalt improvements, such as Douglas Park improvement?
A. Yes, sir.

Q. I will ask you whether or not in making that improvement the park board employed laborers to do any part of the work.

Objected to as incompetent and immaterial. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. Do you know whether or not any of the improvement was made under contract?

175–177 Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. Is the improvement at the intersection of the two branches of the boulevard made in accordance with the original ordinance.

The COURT: That has been asked and ruled on.
Mr. WILBUR: You sustain the objection to that?
The COURT: Yes.
Mr. WILBUR: Exception.

Q. Were any lamps used in the construction of this boulevard?
A. None to my knowledge.
Q. Were they provided for in the estimate?
A. Yes, sir.
Q. Were gas pipes provided for in the estimate?

Objected to.

A. I think there is no provision made for gas pipes. I don't remember any provision being made for gas pipes.

Cross-examination by Mr. MECARTNEY:

Q. The gas lamps, state whether or not the construction of the improvement is such that the gas lamps can still be erected.

Objected to.

A. Oh, yes.

The COURT: I will let it stand.

* * * * * * *

178 & 179 Mr. WILBUR: It is conceded by counsel for both sides in this case that the roadway of Douglas boulevard under consideration herein is park property, and under the sole control and jurisdiction of the board of West Chicago park commissioners; that it is held by them in trust for public purposes the same as the parks of the West Side system.
Mr. MECARTNEY: That is conceded.
Mr. WILBUR: It is further conceded that the improvement under consideration in this case is wholly within the park property.
Mr. MECARTNEY: Wholly within the park commissioners' property; that is conceded.

* * * * * * *

180 The COURT: Have you any further testimony?

Mr. WILBUR: No; I have no other testimony under the ruling of the court.

The foregoing was all the evidence introduced on the trial of said cause.

And thereupon the court gave to the jury, on behalf of the petitioners, the following instructions:

1. The jury are instructed that this is an application for the confirmation of an assessment made by the West Chicago park commissioners; that the objectors, claiming to be interested in some lot or lots of land assessed, have filed objections to the confirmation of the assessment against the premises in which they claim to be interested, and the only questions to be determined by the jury are whether the premises of the objectors or any of their said premises are assessed more or less than they have been specially benefited by the improvement, or more or less than their proportionate share of the cost of said improvement.

2. The jury are instructed that the report of the commissioners or the assessment-roll is *prima facie* evidence that the property objected for in this case had not been assessed more or less than it has been specially benefited by the proposed improvement, nor more or less than its proportionate share of the cost of said improvement.

3. The jury are instructed, as a matter of law, that the West Chicago park commissioners are the sole and only judges of the necessity for and of the mode, manner, and extent of the improvement referred to in the petition and the ordinance in this case, and the jury are not to consider any question of the necessity for nor of the propriety of such improvement.

181 4. The court instructs the jury that they cannot question whether or not the estimate of the total cost of the improvement, as set forth in the assessment-roll, is correct or not; that the said total estimate of cost in said roll is conclusive on the present hearing.

5. The jury are instructed that they have nothing to do with the extent of the territory included in the district assessed in this proceeding. They are to take it for granted that the district is right, and that all the property specially benefited has been assessed. On this subject the determination of the commissioners is conclusive in the present hearing.

6. The jury are instructed that if they believe from the evidence that the assessment as to the property of the objectors is just and correct, and that it has not been assessed more or less than it has been specially benefited by the improvement, or more or less than its proportionate share of the cost of the improvement, then, and in that case, your verdict may be in the following form:

"We, the jury, find the issues for the petitioner herein, and that the property of objectors is not assessed more or less than it has been specially benefited by the improvement, nor more or less than its proportionate share of the cost of said improvement."

And if the jury believe from the evidence that the premises of the objectors have not been specially benefited by the said improvement, the verdict in that case may be in the following form:

"We, the jury, find the issues for the objectors herein, and that the property of the objectors has not been specially benefited by the improvement."

And if the jury believe from the evidence that any of the property objected for has been specially benefited by the said improvement, but not to the extent that the same has been assessed, or that it has been assessed more than its proportionate share of the cost of the improvement, it thereupon becomes the duty of the jury to recast the assessment as to said premises and to find from the evidence the amount for which said premises ought to be assessed.

Your verdict must be written on a separate piece of paper.

To the giving of each and all of which instructions the objectors, by their counsel, then and there excepted.

182 And the objectors, by their counsel, then and there asked the court to give to the jury the following instructions, to wit:

1. The court instructs the jury to find the issues for the objectors.

2. The court instructs the jury that, subsequent to the passage of the ordinance under which the present proceedings are being carried on, it was necessary for the petitioners herein to make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the said assessment, and to enter a report thereof upon its records. If you do not find from the evidence that said petitioners did make such estimate and approve the same and enter a report thereof upon its records, then your verdict should be for the objectors.

3. The court instructs the jury that the ordinance herein provides for an estimate of the cost of said improvement to be made by the petitioners herein, as contemplated by the ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the said assessment, and enter a report thereof upon its records. If you do not find from the evidence that the petitioners herein made such estimate of the cost of the improvement, then your verdict should be for the objectors.

4. The jury are instructed that the only evidence offered by the petitioners herein is the ordinance under which the present proceedings are instituted and the assessment-roll, together with an ordinance which was the basis of a former proceeding relating to the cost of improvement. If you do not find from the evidence that the petitioners herein made an estimate of the cost of the improvement and entered a report thereof upon its records, then your verdict should be for the objectors.

5. The court further instructs the jury that before the petitioners herein were authorized to file the petition under which the present proceedings is being carried on, it was necessary for it to pass an ordinance and to record a report or estimate of the cost of the im-

provement, and it was also necessary for the petitioners to order the petition to be filed by its secretary or such other officer as they may direct. If you do not find from the evidence that the ordinance herein was duly passed, that a report of the estimate was entered upon the records of the petitioner, and that it directed its secretary or other officer to file the petition herein, then your verdict should be for the objectors.

But the court refused to give either or any of these instructions to the jury, and marked each and every of them refused; to which decision of the court in refusing to give the same and each of them to the jury, and to the marking each of said instructions "refused," the objectors, by their counsel, then and there excepted.

183 And thereupon the jury retired to consider of their verdict, and thereafter said jury returned to the clerk of said court its verdict against the said objectors; which verdict was received and read by the court in the presence of the jury and ordered to be entered of record; to which verdict and to the entry thereof the said objectors, by their counsel, then and there *accepted*; whereupon said objectors, by their counsel, then and there moved the court to set aside the said verdict so rendered and to grant a new trial in said cause.

And afterwards and on the 26th day of May, 1898, the matter of the disposition of said motion for a new trial was brought on for hearing by the court in open court, and leave was then and there given by the court to the said objectors, represented by George W. Wilbur, as their counsel, to file their written motion for a new trial, as of said last-named day, on or before the 28th day of May, 1898.

And the court then and there and on said 26th day of May, 1898, and prior to the filing of the written motion for a new trial and against the objection of the said objectors, by their counsel, denied and overruled the motion for a new trial so entered by said objectors, and gave judgment upon the said verdict; to the decision of the court denying such motion for a new trial the objectors, by their counsel, then and there duly excepted.

And afterwards and on, to wit, the 27th day of May, 1898, said objectors, by their counsel, duly filed their motion for a new trial in writing, as of said 26th day of May, 1898; which motion for a new trial is in words and figures as follows, to wit:

184 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for Cost of Completed Portion of Boulevard Improvement of Douglas Boulevard.

And now come the objectors herein, by George W. Wilbur, their attorney, and move the court to set aside the verdict rendered herein, and to grant a new trial in this cause.

For ground of their motion the objectors show to the court the following, to wit:

1. The court erred in not sustaining the legal objections filed herein on behalf of said objectors as to said assessment; and as to each and every of said objections they say that the court erred in not sustaining the same.

2. The court erred in not holding that said assessment was void.

3. The court erred in admitting incompetent, immaterial, and irrelevant evidence on the part of the petitioner-, against the objection of the objectors.

4. The court erred in not excluding from the jury evidence offered on the part of petitioner-, upon motion of the objectors.

5. The court erred in not granting the motion of the objectors to exclude the alleged ordinance offered in evidence herein on the part of petitioners, and which is the basis of the petition herein, and in not excluding said alleged ordinance.

6. The court erred in admitting in evidence herein the assessment-roll offered by petitioners, over the objection of the objectors, and the court erred in not excluding the same.

185 7. The court erred in admitting in evidence an alleged estimate of the cost of said improvement offered by petitioners, over the objection of the objectors, and in not excluding the same.

8. The court erred in admitting an alleged ordinance which purports to be the ordinance under which the said boulevard was constructed, on motion of the petitioner-, and in not excluding the same, on motion of the objectors.

9. The court erred in admitting in evidence other documentary evidence offered by petition-, over the objection of the objectors, and in not excluding the same.

10. The court erred in not dismissing the proceedings herein, on motion of the objectors, for the reason that the petitioners did not prove and produce in evidence a consenting petition, signed by a majority of the owners, requesting the making of said alleged improvement.

11. The court erred in not excluding the evidence offered by petitioners, and in not sustaining the motion *for* objectors to instruct the jury to return its verdict for the objectors.

12. The court erred in excluding competent, material, and relevant testimony offered on the part of the objectors.

13. The court erred in instructing the jury for the petitioner-.

14. The court erred in not instructing the jury to find for the objectors.

15. The court erred in admitting in evidence and in not excluding the said alleged assessment-roll.

16. The court erred in refusing instructions to the jury asked for by the objectors.

17. The verdict is not sustained by the evidence.

18. The verdict is contrary to the evidence.

19. The verdict is void.

20. The said verdict is informal and insufficient.

21. Said verdict is insufficient and void because it is
186 & 187 not based upon a legal and valid ordinance.

22. Said verdict is insufficient and void because it is not based upon a legal estimate duly approved by the petitioners herein, as is required by law, or upon any estimate in the manner and form required by law.

23. Said court erred in not sustaining the legal objections of objectors herein, because the petitioners herein never made and duly approved as estimate of the cost of the alleged improvement in the manner provided by law.

24. The court erred in not sustaining the objections of objectors herein, because said petitioners never made and duly approved any legal estimate of the cost of said improvement, in the manner required by law.

25. The court erred in admitting in evidence, over the objection of objectors, an alleged estimate of the cost of said improvement.

26. These objectors ask to have the verdict herein set aside on the further ground that they have since the said trial and the rendition of the said verdict discovered new and material evidence and evidence of such a nature that if it had been produced on the trial of the issues herein it would have resulted in the finding of a verdict for the objectors, and in a judgment herein in their favor. These objectors further say that such new evidence will be presented on the hearing of the motion herein in the form of affidavits, copies of which will be duly served upon the attorney for the petitioner herein within such time as the court may direct.

All of which is respectfully submitted.

GEORGE W. WILBUR,
Attorney for Objectors.

In support of which motion for a new trial said objectors, by their counsel, produced, filed, and read the affidavit of George W. Dorr, Lewis R. Dyer, and George W. Wilbur. To the affidavit of said Dorr were attached certain exhibits. Said affidavits and exhibits are as follows, to wit:

* * * * * * *

188 STATE OF ILLINOIS, }
County of Cook, } *ss.*:

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

Affidavit of George W. Dorr on Motion for New Trial.

George W. Dorr, being first duly sworn on oath deposes and says that he is by profession and occupation a civil engineer; that he has followed this profession for upwards of twenty years; that during the year 1885 he came to the city of Chicago for the purpose of

continuing his profession, and that he has been so engaged from said last-named year until the date hereof; that during the month of October, 1893, he made arrangements with the board of West Chicago park commissioners to act as civil engineer, and that he continued in that employment from such time until on or about the 15th day of April, 1897.

This affiant further says that as a part of his duty as such civil engineer he was engaged in superintending the construction of what is known as Douglas boulevard, which is a boulevard under the control of the West Chicago park commissioners, and extends from Garfield park south and east into Douglas park.

This affiant attaches hereto as Exhibit A, and makes the same a part hereof, a part of the plans of said boulevard, extending from Garfield park south to the intersection of the boulevard extending to the east, and he attaches hereto as Exhibit B a plan of the portion of said boulevard extending from the intersection of Exhibit
189 A easterly to Douglas park. He also attaches hereto as Exhibit C a cross-section of said boulevard, which was made a part of the original plans for the said boulevard. This affiant also attaches hereto as Exhibit D a plat of that portion of said boulevard as constructed, as the same appears at the western extremity of the east and west boulevard and at the southern extremity of the north and south boulevard. Each of said three Exhibits A, B, and C are copies of the original plans for the construction of said boulevard.

This affiant further states that he was directed by said board of West Chicago park commissioners to take charge of the construction of said boulevard, and that he acted as chief engineer in such construction from the time of the commencement of the work until the final completion of such boulevard; that he had full charge of such work, and that he issued estimates from time to time for work done by the various contractors; that such estimates so made by affiant for such work were duly accepted and acted upon by said board of West Chicago park commissioners or its proper officers and payments or settlements were made with such contractors in accordance therewith.

This affiant further states that the various portions of said work were all done under contracts with different persons or corporations; that the board of West Chicago park commissioners employed no laborers about the construction of the portion of the boulevard specified in the ordinance herein, except in making changes in location of catch-basins and other matters outside of the contract work. This affiant verily believes that the total amount expended for such labor and for extra material did not exceed the sum of two thousand dollars. Affiant had two assistant engineers under him during a portion of the time said boulevard was being constructed.

190 This affiant further states that the original plans, together with the specifications and ordinance for the making of said boulevard, provided for a centre lawn 130 feet in width, extending the whole distance of said boulevard, with the exception of street crossings and intersections and with the exception of that part at

the western extremity of the east and west boulevard and the southern extremity of the north and south boulevard.

This affiant further states that said ordinance, plans, and specifications, under which said boulevard was constructed, provided for the improvement of sixty feet adjacent to the lot line on each side of said boulevard or of sixty feet on each side of said 130-foot lawn, with the exception of the portion at the junction of the two branches of said boulevard, as will more fully appear by the original plans and cross-section of said improvement, copies of which are attached hereto as Exhibits A, B, and C.

This affiant further states that said boulevard, as constructed, contains a centre lawn on the east and west portion thereof of 125 feet between the curbs of said centre lawn; that south of the south curb of said centre lawn is a roadway forty feet in width, lawns twelve feet in width, and cement sidewalk eight feet in width extending from Douglas park to a point four hundred feet east of the western extremity of said portion of said boulevard; that north of the north curb of said centre lawn on said east and west boulevard is a roadway forty feet in width, lawn seventeen feet in width, and cement sidewalk eight feet in width; that at the juncture of the north and south boulevard with the east and west branch thereof is a space four hundred feet square, which is improved as indicated by Exhibit D hereto attached; that the north and south boulevard, commencing at a point on the north line of said space four hundred feet square and extending thence north to Garfield park, is
191 improved as follows: The centre lawn between the curbs thereof is 120 feet in width; the roadway on the east side thereof is of asphalt forty feet in width, with side lawns twelve feet in width and cement sidewalk eight feet in width. On the west side of the centre lawn of said portion of the boulevard is a macadam roadway forty feet in width, side lawns twenty-two feet in width, and cement sidewalk eight feet in width.

This affiant further states that he is familiar with the ordinance and with the original estimate under which said boulevard was constructed; that he has read the petition filed by the town of West Chicago in this court in the original proceedings for the construction of said boulevard, said cause being known as No. 10655; that said petition contains a correct copy of the plans, ordinance, specifications, and estimate used in said original proceedings, as affiant verily believes; that said estimate herein referred to contains many items and specifications of articles which were not used in the construction of said boulevard, as will appear by comparing such estimate with the estimate in the present proceedings.

This affiant further states that he has also seen and is familiar with the estimate which is made a part of the petition herein and which purports to be an estimate of the cost of said boulevard improvement; that said estimate is dated August 4, 1896.

This affiant further states that he is familiar with the cost of said boulevard improvement in the proceedings herein, and in this affidavit set forth, in all of its essential details.

This affiant states that the five feet taken from the north side of

said centre lawn on the east and west boulevard made the portion of the said boulevard south of the lot lines thereof and north of said north curb line sixty-five feet in width; that the side lawns
192 on said portion of said boulevard were increased in width from twelve feet to seventeen feet; that the cost of constructing said side lawns of such increased five feet in width was made a part of the cost of said improvement, and the same is included in the estimate of the cost thereof, and it is a part of the present assessment.

This affiant further says that the side lawn at the south end of the west portion of the north and south boulevard is 22 feet in width, instead of 12 feet, as is provided for in the original plans, specifications, and ordinance; that the cost of improving said increased 10 feet of said side lawn was added to and made a part of the cost of the boulevard improvement involved in this assessment.

This affiant further states that the cost of improving the said centre lawn in the east and west portion of said boulevard was diminished in amount by the cost of improving said five feet which is added to the side lawn thereof, and that the cost of improving the centre lawn of the north and south portion of said boulevard was diminished by the amount required to improve said 10 feet added to said side lawn on the west side of said boulevard; that said last-mentioned side lawn diminishes in width from 22 feet at the southern extremity to about 19 feet at the northern termination of said boulevard.

This affiant further states that he is familiar with the cost of making boulevard improvements similar to the one under consideration herein; that he is also familiar with the amount that it costs to construct said extra width in lawns on the north side of said east and west boulevard and on the west side of said north and south boulevard. This affiant further states that he has carefully computed the cost of constructing said extra width of lawns, and finds the same to be substantially the sum of, to wit, $1,320.00.

This affiant further states that he is familiar with the drive-
193 ways crossing said centre lawns at or near street intersections, and he is also familiar with the cost thereof; that to construct said driveways across said centre lawns, such driveways being of macadam, was the sum of $5,323.81; that the cost of said driveways across said centre lawns was made a part of the cost of said improvement, and such cost is a part of the estimate herein and of this assessment.

This affiant further states that he is familiar with the cost of the macadam driveway on said boulevard which extends on the north side of said east and west boulevard and on the west side of said north and south boulevard; that at the time of the construction of said macadam roadway there was an old macadam road-bed which, as affiant believes, had been in place for a number of years; that its surface was not even, but it was firm and suitable for ordinary driving purposes; that the entire cost of making said macadam driveway, as required by the ordinance herein, was the sum of $30,966.00.

This affiant further states that said space 400 feet square, at the

intersection of said east and west and north and south branches of said boulevard, is improved in a manner different from what is required by the original ordinance and plans, as will appear by Exhibit "D," attached hereto; that the extra cost of macadam driveway therein is the sum of $1,966.00.

This affiant further states that there was a depression of about four feet covering a large portion of said 400-foot space; that said depression was subsequently filled, and a large part thereof is now a part of the centre lawn within said 400-foot space; that the cost of filling such depression was the sum of, to wit, $3,000.00, which amount is added to the cost of said boulevard improvement and is a part of this assessment.

This affiant further states that the asphalt driveway of said boulevard cost the sum of $107,213.71; that in its construction a
194 large amount of filling was required, the road-bed thereof being below the required grade, and it had never been used as a road or driveway.

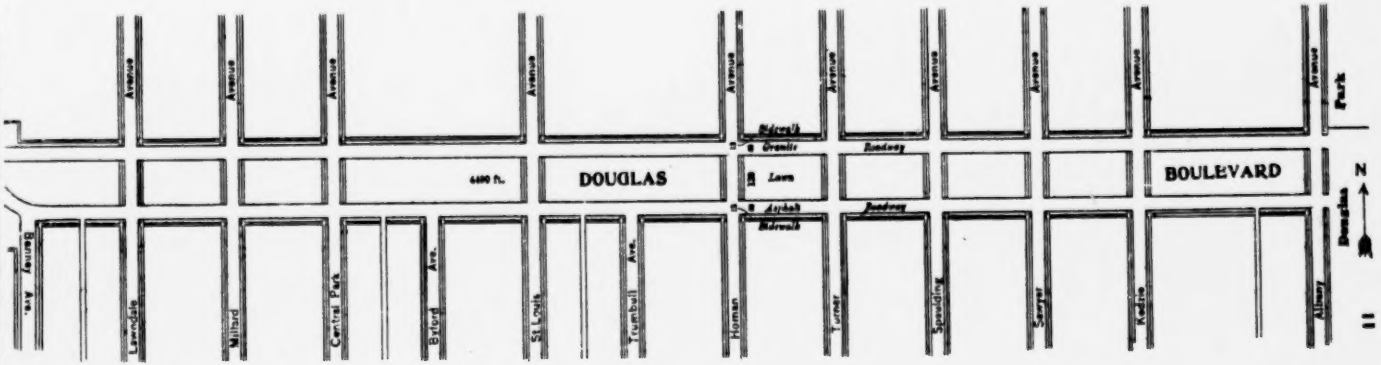
This affiant further says that the cost per front foot on the lot line of constructing the macadam driveway with lawns and cement walks, and including also cost of surveying, engineering, and inspecting, was the sum of, to wit, $7.47; that the cost of constructing the asphalt driveway per front foot on the lot line, including side lawns and cement walks, and including also cost of surveying, engineering, and inspecting, was the sum of, to wit, $19.37+.

This affiant further states that the item of the estimate herein for "manhole covers, sand, cement, brick, pipe, general labor, teaming, engineering, surveying, and inspection, $19,770.51," is excessive. This affiant states that the manhole covers, cement, sand, brick, pipe, general labor, and teaming relate to changes which were made in the location of certain catch-basins, such changes being necessary in order to avoid removing certain trees on the side lawns. This affiant further states, from the best of his knowledge, remembrance, and belief, that the entire cost of the labor and material mentioned in said item of the estimate, excluding therefrom the items of engineering, surveying, and inspection, did not exceed the sum of $2,000.00.

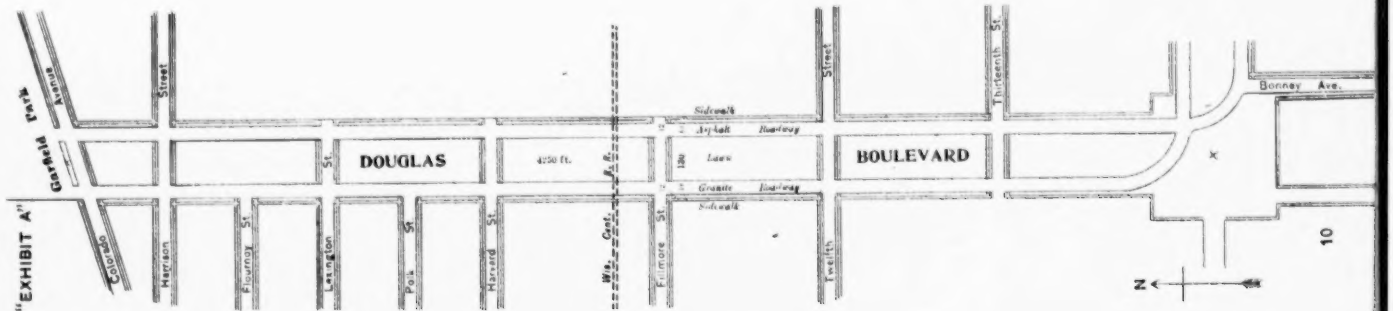
This affiant further states that he is familiar with the fair and reasonable cost of engineering, surveying, and inspecting said boulevard improvement, and that, according to his best knowledge, information, and belief, such engineering, surveying, and inspection should not have cost to exceed the sum of $6,000.00.

This affiant further states that he is familiar with the cost of what is known in the estimate herein as the combined curb and gutter, the estimated cost of which is $28,045.34. Affiant further states that the actual cost of such combined curb and gutter, as appears by the
contracts for the same, was $25,010.17. This affiant further
195 states that, as a part of said estimate, the cost of the combined curb and gutter along each side of the driveways crossing said center lawns is included and made a part thereof, and that such cost is also made a part of the assessment for improving the portion

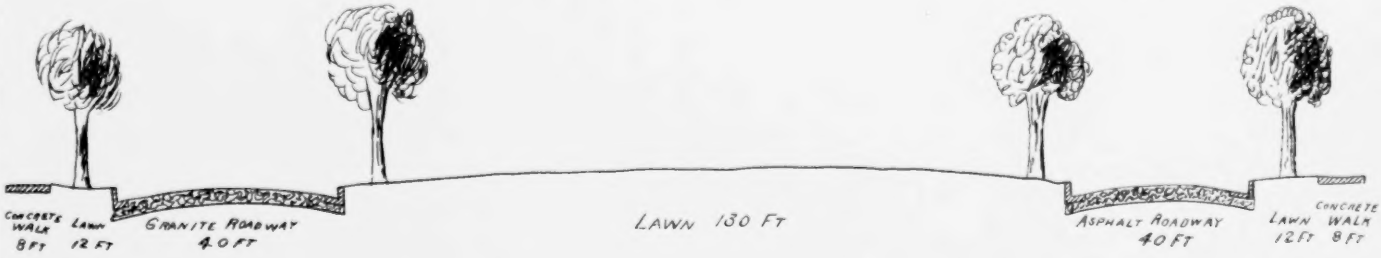
No. 201.
Farrell et al.
v.
West Chicago
Park Comrs.
} p 197



No. 201
Farrell et al.
v.
West Chicago
Park Com'rs
} p. 198



No. 201.
Farrell et al
v
West Chicago
Park Comrs
} p 199



CROSS SECTION OF DOUGLAS BOULEVARD

IMPROVEMENT

MECADAM
DRIVE
CENTER
LAWN
MECADAM
MECADAM
ASPHALT
BONS
ST.
125
40
ASPHALT
CENTER
MECADAM
LAWNDALE
(MECADAM)
AVE.
S
N
W
E
DRIVE
DRIVE
WOODLAND
LAWN
AVE.
40
125
40
CENTRAL PARK
(MECADAM)
AVE.

of said boulevard mentioned in the ordinance, plans, and specifications herein referred to.

This affiant further states that he is familiar with the cost of the cement sidewalks provided for in the ordinance, plans, and specifications for said improvement; that the actual cost thereof, as appears by the estimates issued by this affiant for work actually done by contractors, is the sum of $10,466.99, instead of the sum of $24,262.26, as appears by the estimate of the petitioners herein; that the cost of constructing the cement sidewalks across the center lawns of said boulevard is added to the cost of the improvement specified in said ordinance, plans, and specifications. This affiant states he is positive that the amounts given by him as the actual cost of said cement sidewalks are correct.

This affiant further states that from the best of his knowledge, information, and belief and from the estimates made by him at the time nearly four-fifths of the filling required for the construction of said side driveways was used upon said asphalt driveways.

This affiant further states that from his best knowledge, information, and belief in regard to the cost of said improvement provided for by said ordinance, plans, and specifications and upon the careful examination of his own estimates made at the time and from certain records and documents of the petitioners herein, the entire cost of said boulevard improvement so provided for in said original ordinance, plans, and specifications, exclusive of engineering, surveying, and inspection, did not exceed the sum of $195,239.21.

This affiant further states that he became acquainted with George W. Wilbur, the attorney for certain objectors herein,
196 on or about the 20th day of May, 1898; that on said last-named day he had a short conversation with said Wilbur in regard to the matter of said assessment, but not as to its details. This affiant states that the dimensions of said boulevard as constructed, together with the cost of the various parts thereof, as set forth in the foregoing affidavit, were communicated by this affiant to said Wilbur on the 27th, 28th, and 31st days of May, 1898; that in no prior conversations with said Wilbur did this affiant make known such items of cost of the various parts of said boulevard as herein set forth.

This affiant further states that he makes this affidavit freely and voluntarily and in the interests of justice.

GEO. W. DORR.

Subscribed and sworn to before me this 2nd day of June, 1898.
[SEAL.] R. McCONNELL,
Notary Public.

(Here follow diagrams marked pp. 197, 198, 199, and 200.)

201 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

Lewis R. Dyer, being first duly sworn, on oath deposes and says that he is a civil engineer and surveyor and is familiar with street improvements and street constructions; that he has been a civil engineer and surveyor for upwards of thirty years in the city of Chicago and elsewhere.

This affiant further states that on the 31st day of May, 1898, he, in company with George W. Dorr, who makes an affidavit herein, inspected what is known as Douglas boulevard, extending from Douglas park in a westerly and northerly direction into Garfield park.

This affiant further states that he made careful measurements of the sidewalks, side lawns, roadways, center lawns, and a four-hundred-foot-square space at the juncture of the branches of said boulevard, for the purpose of ascertaining the extent of each thereof; that he found all of the cement sidewalks adjacent to the lot line to be of a uniform width of eight feet; that he found the side lawns on the north side of the east and west boulevard to be of a uniform width of seventeen feet between the sidewalk and the curb; that he found the macadam roadway on the north side of said east and west boulevard to be of a uniform width of forty feet; that he found the center lawn of said portion of said boulevard to be of a uniform width of 125 feet between the curbs thereof;
202 & 203 that he found the asphalt roadway to be of a uniform width of forty feet on the south side of said east and west boulevard, while the lawns were of a uniform width of twelve feet and the cement sidewalk of eight feet.

This affiant further states that he found the side lawns on the west side of the north and south boulevard to be 22 feet in width between the sidewalks and the curb at the southern extremity thereof and to be nineteen feet in width between the sidewalk and the curb at the northern extremity thereof; that he found the macadam roadway on the west side of said north and south boulevard to be of a uniform width of forty feet; that he found the center lawn on said north and south boulevard at the southern extremity to be one hundred and twenty feet in width, and at the northern extremity it is one hundred and twenty-two feet in width; that the asphalt roadway on the east side of said north and south boulevard is of a uniform width of forty feet, and the side lawns are of a uniform width of twelve feet.

This affiant further states that he has seen the affidavit of George W. Dorr herein, to which is attached, as "Exhibit D," a plat showing the surface lines of a portion of said boulevard four hundred feet square at the intersection of the north and south boulevard with

the east and west boulevard; that said plat is correct in all its details in regard to the construction of the boulevard represented on such map.

LEWIS R. DYER.

Subscribed and sworn to before me this 2nd day of June, 1898.

NEWTON A. PARTRIDGE,
[SEAL.] *Notary Public.*

* * * * * * *

204–214 And forasmuch as the matters above set forth do not fully appear of record, the objectors tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made and provided, which is done accordingly this 9th day of July, 1898.

WILLIAM T. HODSON, [SEAL.]
Acting Judge of the County Court of Cook County.

"O K."
H. S. MECARTNEY, *For Petn-.*
GEO. W. WILBUR,
For Objectors.

Foregoing bill of exceptions may be signed by any acting judge of Cook County county court.

H. S. MECARTNEY,
For Pet'n'r-.
GEO. W. WILBUR,
Att'y for Objector-.

* * * * * * *

215 STATE OF ILLINOIS, }
County of Cook, } *ss*:

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true, correct, and complete transcript of the record in the matter of the assessment by the West Chicago park commissioners for the completed portion of boulevard improvement on Douglas boulevard from Garfield park to Douglas park against the property described in the objections filed therein by George W. Wilbur (except the bill of exceptions, the original bill of exceptions being by stipulation incorporated herein and made part of this transcript of record)—gen. No., 15232; all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 13th day of Sept., A. D. 1898.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

216 In the Supreme Court of Illinois, of the October Term, 1898.

THOMAS F. FARRELL ET AL., Appellants, *vs.* WEST CHICAGO PARK COMMISSIONERS, Appellees.	Appeal from County Court, Cook County.

Assignment of Errors.

And now come the appellants, by George W. Wilbur, their attorney, and say that in the said record and proceedings and in the said judgment there is manifest error in this, to wit:

1. The court erred in not sustaining the legal objections filed herein on behalf of said objectors as to said assessment, and as to each and every of said objections they say that the court erred in not sustaining the same.

2. The court erred in not holding that said assessment was void.

3. The court erred in admitting incompetent, immaterial, and irrelevant evidence on the part of the petitioner against the objection of the objectors.

4. The court erred in not excluding from the jury evidence offered on the part of the petitioner, upon motion of objectors.

5. The court erred in not granting the motion of the objectors to exclude the alleged ordinance offered in evidence herein on the part of the petitioners, and which is the basis of the petition herein, and in not excluding said alleged ordinance.

6. The court erred in admitting in evidence herein the assessment-roll offered by petitioners, over the objection of the objectors, and the court erred in not excluding the same.

217 7. The court erred in admitting an alleged ordinance, which purports to be the ordinance under which the said boulevard was constructed, on motion of the petitioners, and in not excluding the same on motion of the objectors.

8. The court erred in not dismissing the proceedings herein on the motion of the objectors for the reason that the petitioners did not prove and produce in evidence a consenting petition, signed by a majority of the owners, requesting the making of said alleged improvement.

9. The court erred in not excluding the evidence offered by petitioners and in not sustaining the motion of objectors to instruct the jury to return a verdict for the objectors.

10. The court erred in excluding competent, material, and relevant testimony offered on the part of the objectors.

11. The court erred in instructing the jury for the petitioners.

12. The court erred in not instructing the jury to find for the objectors.

13. The court erred in admitting in evidence and in not excluding the said alleged assessment-roll.

14. The court erred in refusing instruction to the jury asked for by the objectors.

15. The verdict is not sustained by the evidence.
16. The verdict is contrary to the evidence.
17. The verdict is void.
18. Said verdict is insufficient and void because it is not based upon a legal and valid ordinance.
19. Said verdict is insufficient and void because it is not based upon a legal estimate, duly approved by the petitioners herein, as is required by law, or upon any estimate in the manner and form required by law.

218–221 Wherefore, and for divers other errors appearing in the said record, proceedings, and judgment, the appellants pray that the said judgment may be reversed, etc.

GEO. W. WILBUR,
Attorney for Appellants.

222 & 223 And afterwards, to wit, on the nineteenth day of October, A. D. 1898, certain proceedings were had in said court and orders made and entered of record, among which is found the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 498. Appeal from County Court, Cook.

Now, on this day, come the parties hereto; and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant- hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee- having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

224 And afterwards, to wit, on the twenty-second day of October, A. D. 1898, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 498. Appeal from County Court, Cook.

And now, on this day, the court having considered the motion of appellee, to dismiss the appeal herein, and being advised in the premises, it is considered by the court that said motion to dismiss the appeal herein be, and the same hereby is, reserved to final hearing of this cause.

225 At a supreme court begun and held at Springfield, on Tuesday, the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twenty-first day of December, A. D. 1898, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THOMAS F. FARRELL ET AL. *v.* WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error: therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the county court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the county court of Cook county for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the court that the said appellants recover of and from the said appellees their costs by them in this behalf expended, and that they have execution therefor.

226 At a supreme court begun and held at Springfield on Tuesday, the seventh day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the ninth day of February, A. D. 1899, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 14 R. H. Appeal from County Court, Cook.

Now, on this day, this cause coming on to be heard upon the petition for rehearing of the appellee- for a rehearing herein, and the court being now duly advised in the premises:

It is considered and ordered by the court that said petition for rehearing herein be allowed.

227 And afterwards, to wit, on the 22nd day of February, A. D. 1899, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 14 R. H. Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that a rehearing has been granted herein on petition of appellee-, and appellant- having entered motion to reverse the judgment and remand said cause and for costs, and the said appellee- having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

228 At a supreme court begun and held at Springfield, on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the thirteenth day of October, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

229 THOMAS F. FARRELL * * *
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the

record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error; there-
230 fore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the court that the said ap-lees recover of and from the said appellants their costs by them in this behalf expended, and that they have execution therefor.

231 At a supreme court begun and held at Springfield, on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the thirteenth day of October, 1899, the opinion of the court was filed in the words and figures following, to wit:

T. F. FARRELL ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } No. R. H. 14. Error to —. Appeal from County Court, Cook.

232 Docket No. R. H. 41—Agenda 77—Northern Div.—Feb., '99.

THOMAS F. FARRELL ET AL. *v.* WEST CHICAGO PARK COM'RS.

Mr. Justice BOGGS delivered the opinion of the court:

In Culver *v.* People *ex rel.*, 161 Ill., 89, the ordinance of the corporate authorities of the town of West Chicago providing for the improvement of Douglas boulevard, adopted March 28, 1893, at the request of the West Chicago park commissioners, was declared to be void. The improvement contemplated by said void ordinance having been completed by the commissioners thereunder, said commissioners, on the fourteenth day of July, 1896, in pursuance of the provisions of section 20 of the act in force July 1, 1895, entitled "An act to enable park authorities to make local improvements," etc., adopted an ordinance providing that the cost of making the said improvement should be paid for by special assessments upon the property benefited thereby. This is an appeal from a judgment

of the county court confirming a special assessment under the said ordinance upon certain property of the appellants.

The appellants, who are very numerous, appeared and complied with all the rules of this court, and the cause being ready for decision on their part, it was submitted and taken by the court for determination, after which a motion was made by appellees to dismiss the appeal as to all of the appellants except Michael Kelter, on account of the insufficiency of the appeal bond. Upon the rendition of the judgment in the county court an appeal was allowed to the appellants, severally, on filing a bond in the sum of $250, with surety to be approved by the clerk of the circuit court. A bond was given by Michael Kelter alone, as principal, and Judson D Sherman as surety. It purports to be in behalf of all the other appellants as well as Kelter, and the condition is for the prosecution of the appeal by each of the appellants, and it was approved in accordance with the order allowing the appeal. The bond was insufficient, and if objection had been made in apt time a rule would have been entered requiring a good bond, but the appeal could not have been dismissed without an opportunity to file such bond. Section 69 of the practice act forbids the dismissal of an appeal by reason of any informality or insufficiency of the appeal bond, if the party
233 taking the appeal shall, within a reasonable time to be fixed by the court, file a good and sufficient bond to be approved by the court. When the motion was made the appellants had submitted their controversy to the court, and it could not be entertained without setting aside the order by which the case was taken. There was no motion to set aside that order, and the motion to dismiss must be denied.

The contention of appellants that no proof was made as to the cost of the entire improvement is not tenable. We find the assessment-roll was introduced in evidence and that the total cost of the improvement was therein clearly shown. This disposes of a number of alleged errors based upon this contention.

The judgment here appealed from is the same one which was before this court in Cummings *v.* West Chicago Park Com'rs (*ante*, p. —). Appellants' assignment as for error that it was not proven the owners of a majority of the land fronting on the proposed improvement had petitioned or consented that the improvement should be made is the same as was presented by the appellants in the Cummings case. The alleged error was found groundless in that case, and upon the authority of that holding the same ruling is made in this. The discussion of and reasoning upon the point need not be repeated.

The court properly declined to receive oral testimony as to the contents of the petition of the consenting property-holders for the reason the petition itself was the better evidence and its absence was not accounted for.

The validity of the assessment generally is questioned because the original ordinance limited the assessment to contiguous property, while the new ordinance provides for an assessment upon all property benefited. If that objection would be available it would

only be to an owner whose property was not included in the terms of the original ordinance, and counsel has not made it appear that any of the appellants' property is so situated. If the property of appellants is contiguous to the improvement they could not be prejudiced by a new assessment-roll covering a larger district, by which other property-owners are made to contribute to the expense.

The opinion and judgment of this court in the Culver case, declaring the original ordinance to be void, were rendered and entered in this court on the twenty-eighth day of March, 1896.

234 The appellee commissioners accepted such decision and judgment as final, and on the fourteenth day of July, 1896, in an ordinance adopted on that day, (being the ordinance here involved), declared the provisions of the said original ordinance had failed by reason of such decision of this court, and ordained that a new special assessment on property benefited should be levied and assessed under the provisions of said section 20 of the said act in force July 1, 1895, which provides for such proceedings in the event a prior ordinance has been declared void. Previous to the passage of such last-mentioned ordinance this court, in certain writs of error prosecuted by the appellant Farrell and others to obtain a reversal of the judgment of confirmation against them under the prior void ordinance, declared (Farrell *v.* Town of West Chicago, 162 Ill., 280) such prior ordinance void on the authority of the Culver case. After the ordinance of the appellee commissioners here involved had been adopted, and while proceedings were pending in the county court for confirmation of assessments under it, the plaintiffs in error in the Farrell case caused the original proceeding under the void ordinance, which had been removed from the docket of the county court, to be reinstated in that court for the purpose of filing the remanding orders of this court in the Farrell case. It is now objected that the new ordinance to levy the assessment here under consideration is invalid for the reason it was adopted before the proceedings under the prior ordinance had been concluded, and that for the same alleged reason this proceeding under said last ordinance is premature and cannot be maintained. The point is not well taken. Prior to the adoption of this last ordinance this court had declared the prior ordinance to be void, and the proceedings thereunder in the county court had been, in some way not fully disclosed in the record, stricken from the docket of the county court. Such action was proper to have been taken as a consequence of the decision in the Culver case, and it is to be presumed the proceeding was so disposed of by the county court. The appellee commissioners properly accepted the decision in the Culver case and the striking of the proceeding from the docket of the county court as final, and were fully warranted in taking steps, under the statute, to recover the cost of making the improvement from the property which had been benefited thereby. This

235 latter ordinance and the proceedings thereunder were in no way violative of the orders of this court that the writ of error in the Farrell case should operate as a supersedeas. On the contrary, the action of the commissioners in abandoning the old ordinance and the proceedings thereunder was in obedience to the super-

sedeas orders of this court that they should not proceed further under the prior ordinance.

The trial court properly excluded testimony tendered by appellants for the purpose of showing the cost of that portion of the improvement upon which the property of appellants, or some of them, abutted. The proportionate share of the cost of the improvement to be paid by the different pieces of property is the proportionate share of the cost of the improvement as a whole. The cost of that portion of the improvement which adjoins the property to be assessed has no tendency to show the proportionate part of the cost of the whole improvement to be borne by such property. Other objections of the appellants, equally untenable, were presented by the appellants in the Cummings case, (*ante*, p. —,) and are discussed in the opinion in that case.

The grounds of the objections to the action of the court in passing upon instructions to be given the jury are disposed of by what has been said hereinbefore in the discussion of other alleged errors.

The affidavits as to newly discovered evidence, filed in support of a motion presented by appellants to set aside the order overruling their motion for a new trial, were insufficient to entitle the appellants to a favorable decision on the motion. The testimony relied on as newly discovered, so far as it is in any way important, was contained in the ordinance, plans, specifications, and estimates, which were, of course, open to the inspection of appellants—indeed, compose a part of the record in the cause—and could have been known at the time of the trial by the exercise of the requisite diligence. The alleged changes in the manner of the construction of the improvement, referred to in said affidavits, so far as at all material, were such, only, as were apparent to observation, and by the exercise of even slight diligence would have come to the knowledge of every one interested, as were the appellants, in considering whether the improvement had been completed as contemplated by the ordinance. Dyk *v.* De Young, 133 Ill., 82; Plumb *v.* Campbell, 129 *id.*, 101.

The judgment is affirmed.

Judgment affirmed.

236 STATE OF ILLINOIS, } ss.:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, February 3rd, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

237 And afterwards, to wit, on the 18th day of November, A. D. 1899, a certain order staying proceedings was filed in the office of the clerk of said court in the words and figures following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

Having read and considered the petition for rehearing in this cause, and being of the opinion that there is probable ground for granting a rehearing, it is ordered that all further proceedings herein be stayed until the next term of this court.

Oregon, Illinois, November 22, 1899.

JAMES H. CARTWRIGHT,
Chief Justice.

238 At a supreme court begun and held at Ottawa, on Tuesday, the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the northern grand division of the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Wood, sheriff.

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the eleventh day of December, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

Petition for Rehearing.

Now, on this day, this cause coming on to be heard upon the petition of the appellants for a rehearing herein, and, the court being now duly advised in the premises, it is considered and ordered by the court that said petition for a rehearing be overruled and denied, and it is further ordered by the court that the order staying proceedings, heretofore entered herein, be now set aside and held for naught; and it is further considered by the court that said petitioner pay the costs and charges herein taxed.

239 And afterwards to wit, on the 23rd day of January, A. D. 1900, there *was* filed in the office of the clerk of said court a certain petition for writ of error from the United States Supreme Court, an affidavit of George W. Wilbur, order allowing a writ of error from the United States Supreme Court, and bond; which said petition, affidavit, order, and bond are in the words and figures following, viz:

240 In the Supreme Court of Illinois, of the December Term, 1899.

THOMAS F. FARRELL ET AL., Appellants, vs. WEST CHICAGO PARK COMMISSIONERS, Appellees.	Appeal from County Court, Cook County.

Petition for Citation.

To the Honorable James H. Cartwright, chief justice of the supreme court of Illinois:

Now come Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sarah E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neil, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Struch, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner,
241 Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunningham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, Joseph E. Bidwell, and Michael Hannigan, by George W. Wilbur, their attorney, and show to the chief justice of the supreme court of the State of Illinois that in the record and also in the rendition of the judgment in the above-entitled cause, lately pending in the supreme court of the State of Illinois, between Thomas F. Farrell *et al.*, appellants, and The West Chicago Park Commissioners, appellees, and in which final judgment was rendered against said Thomas F. Farrell *et al.*, appellants, on the seventh day of December, 1899, it appears in the record now remaining in the supreme court of Illinois that certain rights and privileges were claimed under the Constitution of the United States by said Thomas F. Farrell *et al.*, appellants, and that said supreme court of the State of Illinois erroneously decided against said rights and privileges of said Thomas F. Farrell *et al.*, appellants, which were specially set

up and claimed under said Constitution; and, further, that the validity of the authority exercised by said State of Illinois, was drawn in question in said suit by said Thomas F. Farrell *et al.*, appellants, on the ground that said authority was repugnant to the Constitution of the United States, and the decision of said supreme court of Illinois was in favor of the validity of said authority so exercised; from all of which said Thomas F. Farrell *et al.*, appellants, allege that it appears in the said record and proceedings in said suit manifest error has occurred, to the great damage of said Thomas F. Farrell *et al.*, appellants.

Wherefore said Thomas F. Farrel *et al.* respectfully asks that there be granted unto them, under and pursuant to the acts
242 of Congress in such case made and provided, a writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois; that the said record and proceedings may be reviewed and the said error therein may be corrected and speedy justice done in the premises; that said writ of error may be made a supersedeas; that a citation may be issued herein, pursuant to law, citing and admonishing the said West Chicago Park Commissioners to be and appear at the Supreme Court of the United States, at Washington, according to the usual course and practice in such cases; that the supersedeas bond herewith presented to the court may be duly approved, and that such other and further orders and proceedings may be had and entered herein as may be necessary fully to grant to said Thomas F. Farrell *et al.* the relief herein prayed for, according to the usual course and practice in such cases.

And your petitioners will ever pray, etc.

THOMAS F. FARRELL,
J. F. REILLY,
C. E. GREENFIELD,
JOHN T. MILNAMOW,
J. H. LONDRIGAN,
JAMES J. CASEY,
MERCY HOSPITAL AND
MERCY ORPHAN ASYLUM,
DAVID HENNEBERRY,
MARGARET McDONNELL,
MARGARET CASEY,
J. McCALMONT,
SARA E. OBERLANDER,
EDWARD J. McCARTHY,
EMILY STENBERG,
LINA D. THOMPSON,
MARY E. BAILEY,
ELLIS ROBERTS,
SARAH J. LYNCH,
CELIA A. NEIL,
THOMAS A. DAVIS,
FRANK I. CRANE,
C. D. GAMMON,
JOHN B. SCULLY,
M. H. REILLY,
J. H. BREWSTER,
L. C. STEBBINS,
J. J. CARROLL,
THOMAS P. CASEY,
E. D. RAYNOR,
ELIZABETH TWOMEY,
EDWARD L. CASEY,
JOHN VAUGHN,
E. J. McLAUGHLIN,
A. C. BLETTNER,
LOTTIE SIMON,
GEORGE H. BLETTNER,
JAMES L. MONAGHAN,
JAMES CONNOR,
PETER W. REED,
A. R. MARTIN,
D. B. WAITE,
MARY LA LANDE,
FRANK J. NOVAK,
ELIZA HENNICK,
CHARLES G. M. MEYER,

A. E. GAMMON,
JOHN B. KELTER,
ROSE BERWIN,
JOHN P. COAN,
WILLIAM SCOTT,
F. W. E. HENKEL,
JAMES C. DOOLEY,
A. M. MAYPOLE,
M. KELTER,
WILLIAM L. HOERBER,
HENRY MATTHES,
JOHN A. MULLEN,
CARL STRUEH,
JOHN C. KIESSLING,
ELIZABETH B. KELLER,
G. A. PUDEWA,

243–247

HERMAN PAESLER,
EUGENE O'SULLIVAN,
J. G. SHERMAN,
ADELAIDE G. WALTER,
MINA SLAVIK,
JAMES CRIGHTON,
THOMAS D. WAYNE,
LUKE P. COLLERAN,
WILLIAM L. BRENT,
JOHN A. WILSON,
J. W. MIDGLEY,
CHARLES J. BYRNE,
GEORGE W. MILES,
FRANK ZAJICEK,
JOSEPH E. BIDWELL,
F. W. DORN,
W. A. WALTER,
WILLIAM HAASE,
EMMA A. DOYLE,
S. A. SCRIBNER,
MARY O'NEILL,
C. S. STOVER,
J. S. LYONS,
D. H. CUNNINGHAM,
J. L. HOERBER, JR.,
H. S. JOSSELYN,
M. A. MAHONEY,
EDWARD J. DWYER,
MICHAEL HANNIGAN,

By GEO. W. WILBUR,
Their Counsel.

248 In the Supreme Court of Illinois, of the December Term, 1899.

THOMAS F. FARRELL ET AL., Appellants, *vs.* WEST CHICAGO PARK COMMISSIONERS, Appellees. } Appeal from County Court, Cook County.

Order.

Upon motion of George W. Wilbur, attorney for appellants, and upon filing a petition for writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500.00).

And upon further motion of said George W. Wilbur, attorney for said appellants, supported by his affidavit, it is also ordered that said writ of error be allowed to the various parties named in said affidavit as therein set forth—that is to say:

That the name of M. H. Reilly be substituted for the name of W. F. Reilly; that the name of W. H. Londrigan be substituted for the name of V. V. Vincent; that the name of Margaret McDonnell

be substituted for the name of Margaret McDonald; that the name of David Henneberry be substituted as the owner of lots 11 and 12 in Edward Casey's addition to Chicago, which lots are objected for respectively in the names of E. D. Raynor and Elizabeth Twomey; that the name of Elizabeth Twomey be substituted as the owner of lot 14 in said Edward Casey's addition to Chicago, which lot is objected for in the name of Theresa Casey; that the name of Margaret McDonnell be substituted as the owner of lots 17 and 18 in said Edward Casey's
249 addition to Chicago, which lots are objected for in the name of Margaret McDonald; that the name of John Vaughn be substituted as the owner of lots 41 and 42 in said Edward Casey's addition to Chicago, which lots are objected for in the name of Margaret Casey; that the name of Thomas P. Casey be substituted as one of the joint owners of the real estate objected for in the name of James J. Casey *et al.*; that the name of Edward J. McCarthy be substituted for the name of Laura A. Carqueville; that the name of James L. Monaghan be substituted for the name of William Martin; that the name of William L. Brent be substituted for the names of Bell F. Jacobson and James Grennon, respectively; that the name of C. D. Gammon be substituted as the owner of lots 25 and 26, block 5; that the name of Eliza Hennick be substituted as the owner of lots 27 and 28, block 5, and that the name of A. E. Gammon be substituted as the owner of lots 29 and 30, block 5, all in D. S. Goodwin's subdivision, which several lots are objected for in the name of Lucy F. Foote *et al.*; that the name of Rose Berwin be substituted for the name of C. F. Camp; that the name of John A. Mullen be substituted as the owner of the west ½ of lot 23 and all of lot 24, block 3, objected for in the name of R. Melms; that the name of Mina Slavik be substituted for the name of Frank Slavik; that the name of Luke P. Colleran be substituted for the name of Norman Carroll; that the name of J. S. Lyons be substituted for the name of J. W. Lyons; that the name of John A. Wilson be substituted for the name of James Cunningham, and that the name of W. A. Mahoney be substituted for the name of Patrick Moore.

It is further ordered that the above-named parties be substituted as above set forth in a petition for writ of error from the Supreme Court of the United States, and that said substitution be made in all writs and documents hereafter issued in said matter in this court in the same manner as though said names had
250 appeared as herein set forth in the original objections in said cause in said county court.

It is further ordered that the said affidavit of said George W. Wilbur be, and the same is hereby, made a part of the petition herein praying for the issuance of said writ of error.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

Oregon, Illinois, January 20, 1900.

251 Know all men by these presents that we, Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sarah E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neil, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Struch, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunningham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, Joseph E. Bidwell, as principals, and Joseph O'Donohue, as surety, are held and firmly bound unto the West Chicago Park Commissioners in the sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Witness our hands and seals this 11th day of December, A. D. 1899.

The condition of the above obligation is such that whereas, on the 13th day of October, A. D. 1899, a judgment of affirmance
252–258 was rendered by the supreme court of the State of Illinois, being in the October term, 1899, of said court, in a certain cause therein pending, entitled "Thomas F. Farrell *et al. vs.* The West Chicago Park Commissioners," in which said proceedings said principal obligors were appellants from a judgment rendered by the county court of Cook county, Illinois, in the nature of an order confirming a special assessment levied by said appellees upon lots and lands of said appellants, in and by which said judgments of said county court and of said supreme court said principal obligors claim that rights asserted by them under the Constitution of the United States were denied them: that after the rendition of the said judgment of affirmance in said supreme court, and on, to wit, the 7th day of November, 1899, said principal obligors filed in said supreme court their certain petition for a rehearing of said cause, and that afterwards and on, to wit, the 7th day of December, 1899, and of the December term, 1899, said supreme court denied said petition of rehearing of said cause and thereby sustained said judgment of

affirmance so entered on said 13th day of October, 1899, as to the principal obligors herein; and

Whereas said principal obligors have sued out a writ of error from the Supreme Court of the United States to review said judgment of affirmance, and have prayed that the same be made a supersedeas:

Now, if the said principal obligors above named shall prosecute their said writ of error with effect, and if they fail to make their plea good shall answer all damages and costs, then this obligation to be void: otherwise to remain in full force and effect.

* * * * * * *

259 First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and each of them.

Second. The county court of Cook county should have dismissed the petition for confirmation of said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient to support said assessment, and also on the further ground that, in view of the evidence before the court, the same appeared to be insufficient in law, and said supreme court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the county court of Cook county had jurisdiction to confirm the assessment appealed from as to the property of the plaintiffs in error and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by an ordinance and proceedings originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceedings to confirm an assessment therefor, erred in hold-
260 ing that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after the completion of the work.

Sixth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Seventh. The county court erred in not granting the motion of plaintiffs in error for a new trial of said cause on the ground of newly discovered evidence, and said supreme court erred in sustaining said county court therein.

Eighth. Said county court erred in not dismissing said proceedings on motion of plaintiffs in error because said proceedings were being carried on and were instituted under a statute passed subsequently to the completion of said improvement, and said supreme court erred in sustaining said county court in refusing to grant said motion.

Ninth. Said county court erred in not sustaining the motion of plaintiffs in error to dismiss said proceedings because said defendants in error did not produce and prove that they had a consenting petition for the making of said improvement signed by a majority

of the owners of real estate fronting thereon, as required by law, and said supreme court erred in sustaining said county court therein.

Tenth. Said county court erred in not granting the motion of plaintiffs in error to dismiss said proceedings on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said county court on behalf of said plaintiffs in error, and said supreme court erred in sustaining said county court.

Eleventh. Said supreme court erred in overruling the assignments of error of plaintiffs in error and each thereof, and in not sustaining the same.

261 Twelfth. That by the said record it appears that the judgment aforesaid was given for the said West Chicago Park Commissioners against the said above-named plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the said above-named plaintiffs in error and against the said West Chicago Park Commissioners, and the said above-named plaintiffs in error pray the judgment aforesaid may be reversed, annulled, and held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

NEWTON A. PARTRIDGE, *Of Counsel.*

262 In the Supreme Court of the United States.

THOMAS F. FARRELL ET AL., Plaintiffs in Error, *vs.* THE WEST CHICAGO PARK COMMISSIONERS, Defendants in Error.	Error to Supreme Court of State of Illinois.

Statement of the parts of the record and the assignment of errors upon which the plaintiffs in error intend to rely and which they think necessary for the consideration of the court in determining the issues in said cause.

The plaintiffs in error designate the following portions of said record to be printed by the clerk in accordance with the rule of this court:

1. Writ of error from the Supreme Court of the United States and certificate thereto.

2. Citation from the supreme court of the State of Illinois, together with the return of the sheriff of Cook county, Illinois, and the certificate thereto.

3. Certificate of clerk of supreme court of Illinois as to transcripts of record.

4. Transcript of record from page 1 to page 9, inclusive.

5. Preamble to assessment-roll on page 10 and caption thereto on page 11 (omit descriptions on pages 12 to 24, inclusive). Include

that part of page 24 following the line containing the name "J. L. Messweir."

6. Certificate of commissioners to assessment-roll, appearing on pages 25 and 26.

263 7. Objections to assessment, appearing on pages 28 to 36, inclusive. Omit, however, the following objections: 1st, 2nd, 4th, 5th, 6th, 7th, 10th, 13th, 15th, 18th, 20th, 21st, 23rd, and 25th. Omit, also, schedules of land "A" and "B," on pages 36 to 44, inclusive.

8. Order to file objections, entered September 16, 1896, page 45.

9. Objections by George W. Wilbur, appearing on page 46.

Omit schedule of lands on pages 47 and 48.

Omit, also, the following objections:

1, 2, 4, 7, 8, 10, 12, 15, 17, 19, and 21.

10. Order of September 26, 1896, appearing on pages 59 and 60, omitting descriptions, which appear on pages 60 to 64, inclusive.

11. Order of April 27, 1897, appearing on page 67.

12. Order of May 7, 1897, appearing on page 68.

13. Order of May 8th, 1897, appearing on page 69.

14. Order of April 6, 1898, appearing on page 71.

15. Orders of May 18, 1898, appearing on page 72.

16. Amended and additional objections by George W. Wilbur, appearing on pages 73 to 80, inclusive. Omit, however, objections numbered 8, 9, 20, 24, 25, 26, 29, 32, and 33.

17. Order of May 18, 1898, appearing on page 81.

18. Order of May 24, 1898, appearing on page 82.

19. Order of May 25, 1898, appearing on page 83.

20. Order of May 26, 1898, appearing on page 84.

21. Order of May 26, 1898, appearing on page 85 and the following page.

22. Order of May 28, 1898, appearing on page 86.

23. Order of June 4, 1898, appearing on page 87.

24. Bill of exceptions, appearing on pages 92 to 104, inclusive.

25. "Exhibit C," on page 119, and up to and including page

264 137. Omit pages 138 to 159, inclusive, and page 160 down to and including the following:

"Mr. BREEDEN: I am representing the Chicago and Northern Pacific in this trial before the court."

26. The remainder of page 160, commencing as follows:

"Mr. WILBUR: I have nothing further to offer," etc.,

down to and including the following on page 163:

"Mr. MECARTNEY: That is right."

27. Page 165 down to and including the following on page 175:

"The COURT: I will let it stand."

28. Page 178 down to and including the following:

"Mr. MECARTNEY: Wholly within the park commissioners' property; that is conceded."

Omit the remainder of page 178 and pages 179 and 180 down to and including the following:

"(Said documents appear at length in the exhibits which were offered on the hearing of the legal objections, and for that reason it is not necessary that they be repeated here.)"

29. Page 180 from and including the following:

"The COURT: Have you any further testimony?"

down to and including page 186.

30. Page 188 down to and including page 200.

31. Affidavit of Lewis R. Dyer, appearing on pages 201 and 202, inclusive.

32. Certificate of trial judge to record, appearing on page 204.

33. Certificate of clerk of county court of Cook county, appearing on page 215.

34. Assignment of errors, appearing on pages 216 to 218, inclusive.

35. Order of October 19, 1898, appearing on page 222.

265 36. Order of October 22, 1898, appearing on page 224.

37. Order of December 21, 1898, appearing on page 225.

38. Order of February 9, 1899, appearing on page 226.

39. Order of February 22, 1899, appearing on page 227.

40. Order of October 30, 1899, appearing on pages 228 to 230, inclusive, omitting, however, the names of plaintiffs in error, except the first.

41. Opinion of October 30, 1899, appearing on pages 231 to 236, inclusive.

42. Order of November 22, 1899, appearing on page 237.

43. Order of December 11, 1899, appearing on pages 238 and 239, inclusive.

44. Petition for citation, appearing on pages 240 to 243, inclusive.

45. Order, appearing on pages 248 to 250, inclusive.

46. Appeal bond, appearing on pages 251 to 254, inclusive, omitting, however, the names signed thereto and the affidavit appearing on page 254.

The plaintiffs in error intend to rely on the following assignments of error:

Assignments numbered first to twelfth, inclusive, and appearing on pages 259 to 261, inclusive.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

NEWTON A. PARTRIDGE. *Of Counsel.*

Receipt of a copy of above statement is acknowledged this — day of April, 1900.

——— ———,
Counsel for Defendants in Error.

266 STATE OF ILLINOIS, } ss:
County of Cook, }

Hobart W. Martin, being first duly sworn, on oath deposes and says that on the 18th day of April, 1900, he delivered to Francis A. Riddle, counsel for above-named defendants in error, a true and perfect copy of the foregoing statement.

HOBART W. MARTIN.

Subscribed and sworn to before me this 18th day of April, 1900.

{ Seal of Ferdinand W. Jaros, Notary Public, Cook County, Ill. }

FERDINAND W. JAROS,
Notary Public.

267 [Endorsed:] 17639. 525. In the Supreme Court of the United States. Thomas F. Farrell *et al.*, pl'ffs in error, *vs.* The West Chicago Park Commissioners, def't- in error. Statement of parts of record to be printed. Geo. W. Wilbur and Newton A. Partridge, for pl'ffs in error.

268 [Endorsed:] File No., 17,639. Supreme Court U. S., October term, 1899. Term No., 525. Thomas F. Farrell *et al.*, P. E., *vs.* The West Chicago Park Commissioners. Statement of errors & designation by pl'ffs in error of parts of record to be printed & proof of notice. Filed Apr. 20, 1900.

Endorsed on cover: File No. 17,639. Illinois supreme court. Term No., 201. Thomas F. Farrell *et al.*, plaintiffs in error, *vs.* The West Chicago Park Commissioners. Filed February 9, 1900.

No. 1216. 201

FILED
MAY 11 1900
JAMES H. McKENNEY,
Clerk.

No. 525.

IN THE

Supreme Court of the United States.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois

MOTION FOR RULE TO SHOW CAUSE, ETC.

AND

PETITION AND AFFIDAVITS IN SUPPORT THEREOF.

NEWTON A. PARTRIDGE,
GEORGE W. WILBUR,
COUNSEL FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

22775

IN THE

Supreme Court of the United States

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois

MOTION.

Now on this day come the above named plaintiffs in error, by George W. Wilbur and Newton A. Partridge, their counsel, and move the Court that a rule be entered herein that said defendants in error, and each of them, show cause why they should not be punished for contempt in violating the orders of said Court and the statutes of the United States, in attempting to collect the special assessment involved in said proceedings.

Said plaintiffs in error, by their said counsel, also move the Court that Samuel B. Raymond, County Treasurer and ex-officio County Collector of the County of Cook, in the State of Illinois, be made a defendant in error in said cause.

Said motion is supported by a certain petition and several affidavits, together with an abstract of said proceedings and a brief and argument of the counsel for plaintiffs in error.

Respectfully submitted,

NEWTON A. PARTRIDGE,
GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

PETITION.

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.

Error to Supreme Court of State of Illinois.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioner, Judson G. Sherman, one of the above named plaintiffs in error, on his own behalf and on behalf of his co-plaintiffs in error, by George W. Wilbur and Newton A. Partridge, his attorneys, respectfully represent that he, your petitionor, signed a certain bond in said cause, conditioned for the payment of costs and damages, which bond was duly approved by the Chief Justice of the Supreme Court of the State of Illinois; that your petitioner also made a certain petition jointly with his co-plaintiffs in error, asking that a writ of error issue in said cause, which petition was allowed, and a citation was thereafter issued and signed by said Chief Justice of the Supreme Court of the State of Illinois; that said citation was afterwards served upon said defendants in error by the sheriff of the County of Cook, in the State of Illinois, all of which matters will appear by the records and files in said proceedings now in the custody of the clerk of said Supreme Court of the United States.

Your petitioner further states that, subsequent to the

service of said citation, said defendants in error returned the real estate of your petitioner, and of his co-plaintiffs in error, as delinquent to the county treasurer and ex-officio county collector of the County of Cook, in the State of Illinois, by reason of the supposed non-payment of said special assessment, set forth in the records in the above entitled cause.

Your petitioner further represents that said county treasurer and ex-officio county collector holds a certain warrant and claims to have authority for the collection of said special assessment against the property of your petitioner and against the property of the co-plaintiffs in error of your petitioner, and said county treasurer and ex-officio county collector demands of your petitioner that he pay to him, said county treasurer and ex-officio county collector, on account of said special assessment, the sum of $1,616.66.

Your petitioner further represents that said county treasurer and ex-officio county collector, acting under the order and direction of said defendants in error, threatens to sell the property of your petitioner and of his co-plaintiffs in error for said special assessment, and your petitioner fears that said county treasurer and ex-officio county collector will sell said property unless he, said county treasurer and ex-officio county collector, is restrained from so doing by the order of your Honorable Court.

Your petitioner further states, upon information and belief, and he so charges the fact to be, that said West Chicago Park Commissioners, in returning said property involved in the proceedings herein as delinquent, to said county treasurer and ex-officio county collector, in the manner aforesaid, are acting in defiance of the rules and